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Saturday,
9th May, 1953

PARLIAMENTARY DEBATES

HOUSE OF THE PEOPLE

OFFICIAL REPORT

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THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT

HOUSE OF THE PEOPLE

Saturday, 9th May, 1953

The House met at a Quarter Past Eight of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(*No Questions: Part I not published*)

DEATH OF SHRI PANNALAL KAUSHIK

Mr. Deputy-Speaker: Hon. Members might have learnt from the papers about an air crash early this morning. There is the name of one Shri Kaushik among the victims. I hope it is not our Member.

Shri Jaipal Singh (Ranchi West—Reserved—Sch. Tribes): I regret to say, yes, Sir.

Shri Gadgil (Poona Central): He is one of the Members of this Parliament.

Mr. Deputy-Speaker: It is very unfortunate.

Sardar A. S. Saigal (Bilaspur): He spoke on the Air Corporations Bill.

Mr. Deputy-Speaker: The House will certainly join me in expressing our heart-felt condolences to the bereaved family. Mr. Pannalal R. Kaushik, as I find, comes from Rajasthan. He was born in May, 1911, was engaged in business, took part in the Non-Co-operation Movement at different times, was an associate-member of the Federation of Indian Chambers of Commerce, was a member of the Managing Committee of the Ahmedabad Millowners' Association. He has taken part in various activities, was on the Industrial Labour Sub-Committee of the Gujerat Chamber of Commerce and on the Finance Committee of the First National Shooting Championship Contest, Ahmedabad. He was connected with the textile industry for twenty years, and was deeply interested in literature.

I am extremely sorry that such an incident should have occurred, not only with respect to him but others also, but more particularly with respect to a sitting Member of the House. On behalf of the House I would like to send our heart-felt condolences to the members of the bereaved family. The House may stand in silence for a minute to express its sorrow.

Shri T. S. A. Chettiar (Tiruppur): While we all deeply associate ourselves with the resolution of condolence, I want to bring to your notice that due to the Air Corporations Bill the air services are not giving as much attention to maintenance as they should. And I should like that this matter be deeply considered because it will take many months before the actual charge is taken by Government. From the point of view of public safety we feel that an enquiry must be made as to what was the cause of the companies in not keeping proper maintenance of these air-ships. I hope that Government will take up the matter very earnestly and immediately.

TEA BILL

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the Tea Bill. Clauses 2, 3 and 4 were adopted. Clause 5 has to be taken up. There are no amendments to clauses 5 and 6. I shall therefore put both the clauses to vote.

Clauses 5 and 6 were added to the Bill

Clause 7.— (*Vice-Chairman*)

Amendment made:

In page 3, for clause 7, substitute:

"7. *Vice-Chairman.*—The Board shall elect from among its members a Vice-Chairman who shall exercise such of the powers and discharge such of the duties of the Chairman as may be prescribed or as may be delegated to him by the Chairman."

—[*Shri A. M. Thomas*]

Mr. Deputy-Speaker: The question is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clause 8.— (*Executive etc.*)

Shri A. V. Thomas (Srivaikuntam): In view of the assurance given to me by the hon. Minister that he will give sufficient protection in the rules to be framed, I am not moving my amendment.

Mr. Deputy-Speaker: Very well.

Clause 8 was added to the Bill.

Clause 9.— (*Secretary and Staff*)

Shri Damodara Menon (Kozhikode): I beg to move:

In page 4, line 2, add at the end:

"in consultation with the Union Public Service Commission."

Item (b) of sub-clause (1) of clause 9 says that all other officers of the Board drawing a salary of rupees one thousand or more per month shall be appointed by the Government. That is to say, Government have taken powers to appoint officers drawing a salary of over Rs. 1,000. In respect of officers who draw salary upto Rs. 350 the Board is given the power. Regarding the appointments made by the Board, the Board is required to consult at least one member of the Public Service Commission. I see no reason why in respect of appointments of officers drawing Rs. 1,000 and above the Government should not also follow the same principle and consult the Public Service Commission. I hope this amendment will be acceptable to Government.

The Minister of Commerce (Shri Karmarkar): In the case of appointments made by Government, wherever suitable the Public Service Commission is consulted. In this case we do not at the present moment seek to bind ourselves that in every case we shall consult the Public Service Commission. We do not accept the amendment.

Mr. Deputy-Speaker: The question is:

In page 4, line 2, add at the end:

"in consultation with the Union Public Service Commission."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Clause 10.— (*Functions of the Board*)

Shri S. C. Deb (Cachar-Lushai Hills): I beg to move:

(i) In page 4, line 29, for "tea waste dealers" substitute "dealers in tea waste not for human consumption".

(ii) In page 4, after line 30, insert:

"(jj) banning marketing of waste tea for public consumption,"

My amendments deal with waste tea. Waste tea, from the point of view of public health, is unfit for human consumption but here there is a provision for dealing with tea waste and licences will be issued for tea waste. What I say is licences should not be issued to sell this waste for human consumption. It may be used for any other purpose. My amendment is to the effect that the tea waste should not be used for human consumption. It is prevalent that some persons catch hold of this waste tea, bring it, mix it up with good quality tea and it is sold in the open market. I would like the hon. Minister to see that at least this should not be brought to the market for sale as it is not fit for human consumption.

You know that 30 per cent. of tea is consumed in the internal market all over India. Every consumer likes to have good quality tea for consumption. I am coming from a major tea growing area, *viz.*, Assam, where waste tea is being sold in the market after mixing it up with good tea. It is injurious to health and I would like the hon. Minister to consider the situation and accept these amendments. I think the hon. Minister will certainly consider this situation and that he is also of the view that waste tea should not be allowed to come in the market for human consumption. A restriction should be made that such kind of tea should not be brought in. It may be used for colouring or other purposes. This is the only purpose of my humble amendments.

A question was raised here whether this waste tea is sold in the market and the hon. Minister answered that he was not in possession of the facts but we are all in possession of facts. We are always seeing persons practising this thing though in a very awkward way. They bring it from the tea gardens and mix it up with other tea at their sweet will and then bring it in the market.

Another thing which I would ask the hon. Minister to consider in this connection is that if the sale of this kind of tea is checked, the internal market for this tea will increase to the tune of ten per cent. This is my experience. I am coming from a tea garden area and I am there from the very beginning of my life and I know all its implications how it is grown how it is being manipulated, how tea concerns are working there. etc. I am acquainted with all the things connected with tea.

I wholeheartedly support this measure. It is a measure to control the tea industry. At least 80 per cent. of the tea concerns are owned by foreigners. They should be controlled. It should not be considered as a measure by which the Government wants to take over the whole industry. It is a measure to bind the hands of the foreigners who are all along working in this field uninterrupted and Government were made sometimes helpless. Anyhow these foreigners should be controlled.

Shri Karmarkar: I oppose the amendments.

Shri S. C. Deb *rose*—

Mr. Deputy-Speaker: The hon. Member has evidently not completed his speech.

Shri Karmarkar: I thought he has completed.

Mr. Deputy-Speaker: Has he anything more to say?

Shri S. C. Deb: I will have to hear the hon. Minister as to how he considers my amendments.

Shri Karmarkar: This matter came up before the Select Committee and the difficulty was that it was very difficult to define what tea waste is. We could not come to a precise definition for this tea waste. I find it difficult to accept these amendments. I oppose both the amendments.

Dr. M. M. Das (Burdwan-Reserved—Sch. Castes): The hon. Minister said it was difficult to find a proper definition for the words 'tea waste'. Then how is he going to differentiate between tea and tea waste?

Shri Karmarkar: We shall find out what tea waste is in future.

Dr. M. M. Das: In future?

Shri Karmarkar: Yes. We shall definitely come to the conclusion what tea waste is. If we define it in the Bill, that means we give right to everybody to give a definition in his own way.

Dr. M. M. Das: You are going to do it by executive order.

Shri Karmarkar: In this clause we do not want tea waste either to be banned or to be treated by these amendments. We oppose these amendments..

Dr. M. M. Das: What steps are you going to take to define tea waste? It should be differentiated from the tea for consumption.

Shri Karmarkar: We shall take all effective steps. Let the hon. Member have no worry.

Shri Barman (North Bengal—Reserved—Sch. Castes): This question was considered in the Select Committee and it was found difficult to describe exactly what is meant by tea waste. After much deliberation, sub-clause (n) of clause 3 was amended by the Select Committee. The following words were added:

"...... all varieties of the product known commercially as tea........."

This is the definition accepted in the international market. All other tea is waste. That was the general definition and this was found to be the most suitable definition.

Shri Karmarkar: I am grateful to the hon. Member for explaining the position. It is defficult to define tea waste. It is by exclusion, by including in it what is commercially known

[Shri **Karmarkar**]

as tea, but for practical purposes, we have had to accept that definition and these amendments make an artificial distinction between tea waste fit for consumption and not fit for consumption There is no doubt that waste tea is unfit for human consumption. The difficulty is to define in a particular manner what tea waste is.

That is precisely why we oppose these two amendments.

Shri S. C. Samanta (Tamluk): I cannot associate myself with the amendments of Mr. Deb. But, at the same time, I must request the Commerce Ministry to see that tea waste is not mixed with pure tea. There are unscrupulous dealers who buy this waste tea and mix it with good tea. One thing should be mentioned in the rules. My suggestion is that this tea waste in the factory should be denatured so that it cannot be used for human consumption. It may be used for chemical purposes and other things. So I suggest that in the rules Government should say that waste tea in all factories should be denatured.

Shri A. V. Thomas: I agree with my hon. friend about the question of tea waste. I might also tell the House that in our estates, the tea waste is either destroyed or denatured as my hon. friend says. The hon. Minister accepts that tea waste should not be allowed on the market for human consumption. I am glad of that. But, as they are not able to find a definition for tea waste, they have not been able to include it in the Bill. If he could give an assurance that as soon as he is able to find a definition for tea waste, he would ban tea waste coming to the market and being sold for human consumption, I would be satisfied.

Shri S. C. Deb *rose*—

Mr. Deputy-Speaker: The hon. Member has had his say. The hon. Member spoke at length on this matter.

Shri S. C. Deb: One point I want to clear.

Mr. Deputy-Speaker: How can the hon. Member speak twice. I am afraid he cannot.

Dr. M. M. Das: The functions of the Board include also the following items: improving the quality of tea, promoting co-operative efforts among growers and manufacturers of tea; undertaking, assisting or encouraging scientific, technological and economic research and maintaining or assisting in the maintenance of demonstration farms and manfacturing stations; assisting in the control of insects and other pests and diseases affecting tea, etc. From this it will be evident that these functions are nothing but plans and programmes for development of the tea industry. But, yesterday, during the discussion of the amendment of my hon. friend Mr. Punnoose for including development as one of the objects of this Bill, the hon. Minister said that as tea is an agricultural subject, the Central Government has no constitutional right to include development as one of the objects of this Bill.

Here, we find that the functions of the Board include plans and programmes of development. Yesterday, by refusing to accept the amendment of my hon. friend Mr. Punnoose, we obeyed the letter of our Constitution. Because tea is an agricultural subject, it is the right of the States to make arrangements for development and the Central Government has got no constitutional right for making arrangements for development. But, today, we find that the functions of the Board include several items which are nothing but plans for the development of the tea industry. So, if we include these items, the spirit of the Constitution will be violated. That is my point. I want the hon. Minister's explanation.

Shri S. C. Deb: I would like to explain my point. Mr. Thomas is a planter. He is not in favour of putting tea waste into the market. You ask any representative of labour; he would not agree to it. You ask any doctor who has to deal with the health of the people. He would not agree to its being sold to anybody.

Mr. Deputy-Speaker: That is agreed. What is the suggestion?

Shri S. C. Deb: My suggestion is very simple. If it is prohibited in the Bill it will not brought to the market.

Mr. Deputy-Speaker: Very good.

Shri Karmarkar: I have nothing more to add.

Shri Sarmah (Goalghat-Jorhat): In respect of..........

Mr. Deputy-Speaker: How long can I go on like this? The hon. Member must have spoken before the hon. Minister. What has the hon. Member to say?

Shri Sarmah: In sub-clause (2) (b) of clause 10, it is stated:

> "securing better working conditions and the provisions and improvement of amenities and incentives for workers;"

The term 'workers' has been defined in the Plantation Act in clause (k) of section 2 thus:

> " 'worker' means a person employed in a plantation for hire or reward, whether directly or through any agency to do any work, skilled, unskilled, manual or clerical, but does not include—
>
> (a) a medical officer at the plantation,
>
> (b) any person whose monthly wages exceed Rs. 300; etc.......”

It includes a clerk who draws less than Rs. 300 a month, but does not include a medical officer. Indian doctors are called assistant medical officers and usually they draw less than Rs. 300 per month. I submit that if the Government so pleases, they may include assistant medical officers in charge of hospitals in the tea estates who usually draw less than Rs. 300 a month.

Shri Karmarkar: What is the amendment that the hon. Member is referring to?

Sri Sarmah: No amendment; I am speaking on clause 10.

Mr. Deputy-Speaker: The hon. Member must have looked into this matter earlier.

Shri N. M. Lingam (Coimbatore): With regard to tea waste, the Select Committee went into this question in great detail and it was ultimately found that it was best to leave it to be defined in the rules. In clause 49, we find there is a sub-clause(s) which says:

> "the manner in which a broker or a dealer in tea waste or a manufacturer shall be licensed under this Act and the levy of fees in respect of such licence;"

It was proposed that the conditions under which tea waste could be sold in public should be incorporated in the licence to be issued by the Government. So it was deliberately left to this clause. Hence it was not included in the definition clause. I think it is best not to define it.

Mr. Deputy-Speaker: The question is:

> In page 4, line 29, for "tea waste dealers" substitute "dealers in tea waste not for human consumption".

The motion was negatived.

Mr Deputy-Speaker: The question is:

> In page 4, after line 30, insert:
>
> "(jj) banning marketing of waste tea for public consumption,"

The motion was negatived.

Dr. M. M. Das: The hon. Minister did not reply.

Mr. Deputy-Speaker: He has already replied. He does not think it necessary to reply again.

The question is:

> "That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Clause 11.— (*Dissolution of the Board*).

Shri A. V. Thomas: I beg to move:

> In page 4, line 41, after "Official Gazette" insert "specifying the reasons which necessitate such action".

Mr. Deputy-Speaker: Amendment moved:

> In page 4, line 41, after "Official Gazette" insert "specifying the reasons which necessitate such action."

Shri Damodara Menon: I beg to move.

> In page 4, after line 43, add:
>
> "Provided that such notification together with a statement of the reasons for dissolution shall be placed on the Table of the House."

Mr. Deputy-Speaker: Amendment moved:

In page 4, after line 43, add:

"Provided that such notification together with a statement of the reasons for dissolution shall be placed on the Table of the House."

Shri A. V. Thomas: My amendment is to clause 11, which runs as follows:

"The Central Government may, by notification in the Official Gazette, direct that the Board shall be dissolved.........etc."

This is a very simple request. According to the Bill, the Government have the power to dissolve the Board. If they have to dissolve the Board for any reason, they should state such reason in the order. That is all I am asking.

Shri Damodara Menon: Mine is a little expansion of the amendment of my hon. friend Mr. A. V. Thomas. This clause gives power to the Government to dissolve the Board, and also to publish a notification in the Official Gazette to that effect. My amendment says that such notification, together with a statement of the reasons for dissolution shall be placed on the Table of the House.

Normally, Government will have no occasion to dissolve the Board. It will be under extraordinary circumstances that this power will be exercised by the Government, and when it is done, it is only right that the reasons that led the Government to take such a drastic decision should be placed on the Table of the House so that the House may have an opportunity to know the reasons for the dissolution, and also, if necessary, discuss it. I hope the hon. Minister will accept my suggestion.

Shri Karmarkar: We oppose these amendments firstly because the winding up of the Tea Board is a very very remote possibility and unless there are very weighty reasons, such a drastic course will not be taken.

Secondly, we as a Government are always at the disposal of this House, and even a Short Notice Question will enable the Members of this House to know the reason for the dissolution of the Tea Board, but we do not want to go beyond that. And, therefore, we think that whereas the reasons for the dissolution of the Board will always be available, it is very obvious, we do not think it necessary that the notification itself should contain these reasons.

Shri Damodara Menon: What about placing it on the Table of the House?

Shri Karmarkar: We may have to take action at any time when the House is not sitting. The questoin arises as to the time within which it should be placed on the Table of the House, and as it is, it will satisfy the amendment if it is placed on the Table three years after. So, unless the amendment is specific as the amendment to the Tariff Act, for instance, regarding the time within which it should be laid on the Table of the House, it will serve no useful purpose.

Mr. Deputy-Speaker: Is the hon. Member withdrawing his amendment?

Shri Damodara Menon: No. I do not withdraw.

Mr Deputy-Speaker: Then, there is no good replying to the hon. Minister.

Shri A. V. Thomas: I beg leave to withdraw my amendment if the amendment of my hon. friend Mr. Damodara Menon is put to the vote of the House.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

In page 4, after line 43, add:

"Provided that such notification together with a statement of the reasons for dissolution shall be placed on the Table of the House."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 to 23 were added to the Bill.

Clause 24.—(*Limitation etc.*)

Amendment made:

In page 9, line 32, for "three" substitute "ten".

—[*Shri A. V. Thomas*]

Mr. Deputy-Speaker: The question is:

"That clause 24, as amended, stand part of the Bill".

The motion was adopted.

Clause 24, as amended, was added to the Bill.

Clause 25. (*Imposition of a duty etc.*)

Amendments made:

In page 9, for lines 45 and 46, substitute:

"(2) The cess levied under sub-section (1) shall be in addition to any other duty leviable under the Indian Tariff Act, 1934 (XXXII of 1934) or any other law for the time being in force and shall be collected by such agencies and in such manner as may be prescribed.

—[*Shri Karmarkar*]

Mr. Deputy-Speaker: The question is:

"That clause 25, as amended, stand part of the Bill."

The motion was adopted.

Clause 25, as amended, was added to the Bill.

Clause 26.—(*Payment of duties etc.*)

Shri Karmarkar: I beg to move:

In page 10, for clause 26, substitute:

"26. *Payment of proceeds of cess to the Board.*—The proceeds of the cess levied under sub-section (1) of section 25 shall first be credited to the Consolidated Fund of India, and the Central Government may thereafter, from time to time, pay to the Board from and out of such proceeds such sums of money as it may think fit after deducting the expenses of collection".

Shri A. V. Thomas: I have an amendment. The hon. Minister has given some explanation and told me that there is a certain amount of difficulty under the Constitution in taking the whole amount to the Central funds and the Government paying only such sums as may be necessary. If there is any constitutional difficulty, I do not press it.

Mr. Deputy-Speaker: I will put the Government amendment to the vote of the House.

Shri K. C. Sodhia (Sagar): I want to put one question.

Mr. Deputy Speaker: Until the Bill is over, the hon. Member may take one of the front seats.

Shri K. C. Sodhia: My question to the hon. Minister is whether this is a cess that they are going to put on the industry or whether it is an excise duty. If it is an exise duty, has this Ministry taken over from the Finance Ministry the power to put excise duty on tea? If it is not excise duty and if it is a cess, this Ministry has no power to take all the proceeds of the cess to the Treasury and then dole out certain sums out of that. This is my submission. I want to know whether it is a cess or an excise duty.

Shri Karmarkar: The obvious answer is that it is a cess, and I am advised that what we have sought to do is perfectly constitutional.

Mr. Deputy-Speaker: The question is:

In page 10, for clause 26, substitute:

"26. *Payment of proceeds of cess to the Board.*—The proceeds of the cess levied under sub-section (1) of section 25 shall first be credited to the Consolidated Fund of India, and the Central Government may thereafter, from time to time pay to the Board from and out of such proceeds such sums of money as it may think fit after deducting the expenses of collection".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 26, as amended, stand part of the Bill."

The motion was adopted.

Clause 26, as amended, was added to the Bill.

Clause 27.—(*Constitution of Fund*)

Amendment made:

In page 10, line 8, for "the proceeds of the duties of customs", substitute "the proceeds of the cess".

—[*Shri Karmarkar*]

Mr. Deputy-Speaker: The quesion is:

"That clause 27, as amended, stand part of the Bill".

The motion was adopted.

Clause 27, as amended, was added to the Bill.

Clause 28 was added to the Bill.

Clause 29 —(*Accounts and audit*)

Dr. M. M. Das: I beg to move:

In page 10, line 23, after "Central Government" insert "in consultation with the Comptroller and Auditor-General of India".

Clause 29(2) deals with the appointment of an auditor who will examine the expenditure and other accounts of the Tea Board.

In making this appointment there is no provision in this Bill to associate the Comptroller and Auditor-General of India. The non-association of the Comptroller and Auditor-General of India regarding the appointment of the auditor who will examine the accounts of the Board will result in defective parliamentary control over the expenditure of the Board.

In a democratic form of Government, parliamentary control over Government expenditure is imposed in to ways. Firstly, when the permission of Parliament is sought during the time of the Budget for taking out the required sum from the Consolidated Fund of India, Parliament gets an opportunity to discuss the policy and the items of expenditure. Secondly, when the expenditure has already been incurred, the Comptroller and Auditor-General of India examines the accounts and gives a report. That report will be laid on the Table of the House and Parliament through a special committee of their own, namely, the Public Accounts Committee, examines the report of the Auditor-General and the Public Accounts Committee in their turn produce another report which is submitted to Parliament. Thus we find that one control is imposed before the expenditure and another control is imposed after expenditure to see whether the sums granted as the Demands for Grants during the Budget have been properly spent or not. Until and unless both these processes are carried out properly, parliamentary control over governmental expenditure is neither complete nor efficient.

So far as the present measure is concerned, only the first control will be carried out. Provision has been made in this Bill so far as the first part is concerned, namely, during the Budget Parliament will get an opportunity to discuss the policy and the items of expenditure. Clause 26, as redrafted by the Select Committee, provides that the entire proceeds of this cess will be credited to the Consolidated Fund of India and during the time of the Budget when Demands will be made to draw that money from the Fund, Parliament will get an opportunity to discuss the policy as well as the items of expenditure. But it is not enough to discuss the policy and the items of expenditure alone. Parliament must satisfy itself that the money it has sanctioned during the time of the Budget has been properly spent. This can only be done by the Auditor-General. The Auditor-General's certificate is essentially necessary to satisfy the public as well as the Legislature that the Demands which Parliament has voted have been properly spent.

The significance, the great importance, of the accounts being examined by the Auditor General lies in the fact that both the granting of the Demands and incurring of the expenditure of the amount lie within the power of the ruling party, the party that runs the Government. But the Auditor General, the man who examines these accounts, is an independent man who is completely outside the ambit of influence of the Government, that is the ruling political party. The Comptroller and Auditor-General is an officer protected by our Constitution who cannot be touched ordinarily by the ruling party, that is the party that runs the Government. Our Constitution has made ample provision for maintaining the impartiality and the independence of the Comptroller and Auditor General so that in any case he is capable of giving his judgment without any fear of frowns from the Government.

Perhaps, it will not be impertinent to mention here that today more than 30 different cesses are being collected by the Central Government. The total amount of these 30 cesses will be—I speak subject to correction—more than 100 crores of rupees. The expenditure of these 100 crores of rupees is without any control, without any financial control of Parliament. The proceeds of these 30 cesses are not credited to the Consolidated Fund of India, but they are directly handed down to the authorities that spend them. During the time of the Budget, Parliament does not get any opportunity to discuss and review the policy and the items of expenditure. The Comptroller and Auditor-General also does not examine the accounts of the expenditure of these cesses.

My submission to you and to this House is that the sooner parliamentary control is established over the expenditure of these cesses—these hundreds of crores of rupees—the better it is for the Legislature, the country as well as the Government. Thus it is necessary that the accounts of every expenditure incurred by any department of the Government should be examined by the Comptroller and Auditor-General of India. This is necessary not only to create public confidence but also to avoid unnecessary and uncharitable criticism.

9 A.M.

So far as the provision for audit in this Bill is concerned, not to speak of the audit being conducted by the Auditor-General, even in the appointment of a private auditor the Auditor-General has not been associated. The Government will appoint the auditor themselves without any consultation even with the Comptroller and Auditor-General. My amendment seeks to provide that the Auditor General should be associated at least during the time of appointment, during the time of selection of the private audit firm who will examine the accounts of the Board.

Mr. Deputy-Speaker: Amendment moved:

In page 10, line 23, after "Central Government" insert "in consultation with the Comptroller and Auditor-General of India".

What is the objection in consulting the Auditor-General?

Shri Karmarkar: I entirely agree with the spirit of what my hon. friend has said. In fact, even without any provision being there and even though we have the power to appoint any auditor without consulting the Auditor-General, as a matter of fact, the position as it at present stands, is that the Accountant-General, West Bengal is the Auditor of the Board; and he has been appointed in consultation with the Comptroller and Auditor-General. It is not at all likely that we are going to change that method and, therefore, we do not think this amendment will be necessary.

Mr. Deputy-Speaker: How will it stand in the way? By way of abundant caution, you can have consultation. What is the harm? There must be control of Parliament over all expenditure wherever it occurs. Instead of asking the Auditor-General to audit himself, what is the harm in doing it in consultation with him? What is the Auditor-General for?

Shri Karmarkar: I assure the House that we shall continue the present system. In view of this asurance, I hope.

Mr. Deputy-Speaker: What is the objection? The hon. Minister must consider. Every item realised by way of revenue, either as cess or revenue; must be under the control of Parliament and audited by the Auditor-General. At any rate, consultation with him will be necessary. The hon. Minister may think over it.

Shri Karmarkar: I shall think over the matter.

Mr. Deputy-Speaker: When? After the clause is passed or not?

Shri Karmarkar: I am sorry at the present moment I am advised not to accept this amendment. But I can assure the House that we shall continue to consult the Auditor-General when making any appointment.

Mr. Deputy-Speaker: Very well. Does the hon. Member, Dr. M. M. Das want to press his amendment in view of the assurance given by the hon. Minister?

Dr. M. M. Das: In spite of the assurance, I think there is......

Mr. Deputy-Speaker: All right. There need be no argument. I will put it to the vote of the House.

The question is:

In page 10, line 23, after "Central Government" insert "in consultation with the Comptroller and Auditor-General of India".

The motion was negatived.

[Mr. Deputy-Speaker]

Amendment made:

In page 10, line 24, for "the Act" substitute "this Act".

—[*Shri Karmarkar*]

Mr. Deputy-Speaker: The question is:

"That clause 29, as amended, stand part of the Bill."

The motion was adopted.

Clause 29, as amended, was added to the Bill.

Clause 30.—(*Power to control price etc.*)

Amendments made:

In page 11, for lines 5 to 7, substitute:

> "(b) direct any person growing, manufacturing or holding in stock tea or tea waste to sell the whole or a part of such tea or tea waste so grown or manufactured during any specified period, or to sell the whole or a part of the tea or tea waste so held in stock, to such person or class of persons and in such circumstances as may be specified in the order;"

—[*Shri Karmarkar*]

In page 11, after line 9, insert:

> "(4) Where in pursuance of any order made with reference to clause (b) of sub-section (3) any person sells the whole or a part of any quantity of tea or tea waste, there shall be paid to him as price therefor—
>
> (a) where the price can be fixed by agreement consistently with the order, if any relating to the fixation of price issued under sub-section (1), the price so agreed upon;
>
> (b) where no such agreement can be reached, the price calculated with reference to any such order as is referred to in clause (a);
>
> (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale".

—[*Shri Karmarkar*]

Mr. Deputy-Speaker: I believe all the other amendments fall through.

Shri A. M. Thomas (Ernakulam): I have my amendment—No. 18.

Mr. Deputy-Speaker: Is it not inconsistent with the amendments that have been accepted?

Shri A. M. Thomas: No, Sir. I beg to move:

In page 10, line 32, after "The Central Government may" insert "after consulting the Board".

The question has been referred to by the hon. Minister in his speech and the reasons given for not introducing the condition of previous consultation are that where we deal with the Chief Justice of India or the Election Commissioner whom the Government of India consult in regard to certain matters, the consultation is official and the recommendation is final and that the Government do not propose to give the Board any such official authority.

I fail to understand the reasoning when the Government is given all the powers of control over the Board to give directions, why is it difficult for the hon. Minister to accept this amendment, namely that action in certain directions may be taken after consulting the Board? I have not introduced these words in every clause which empowers the Government to take action. It is only in specific cases which deal with specific functions of the Board that I wish to have previous consultation as a condition precedent. Clause 30 runs like this.

> "The Central Government may, by order notified in the Official Gazetted, fix in respect of tea of any description, specified therein—
>
> (a) the maximum price or the minimum price or the maximum and minimum prices............".

When we come to the functions of the Board, we find it stated in clause 10(f) "regulating the sale and export of tea" so that action under clause 30 will come directly within the functions of the Board. In such cases, my submission is that it is good that the Board is consulted.

The hon. Minister does not evidently want to equate the position of the Board to the position of the Chief Justice of India or the Election Commission. I can perfectly understand that position but there is a great deal of difference betwen a Board constituted by a solemn Act of this Parliament, like the Tea Board or other statutory Commodity Boards on the one hand and other Advisory Boards, like the

Railway Advisory Board, the Posts and Telegraphs Advisory Board or the Telephone Advisory Board constituted by mere executive action of the Government on the other hand. This is a Board constituted by an Act of Parliament, so that it must be given a status different from the latter category, though not the same position as that of the Election Commission or the Chief Justice of the Supreme Court of India. My submission is that consistent with the objects with which these Boards are constituted, at least in functions directly coming within their purview, it is better we insert a clause to the effect that action shall be taken by the Government only after consulting the Board. I believe in such a limited sphere it is advisable to make previous consultation compulsory before action is taken.

Mr. Deputy-Speaker: Amendment moved:

In page 10, line 32, after "The Central Government may" insert "after consulting the Board".

Shri Venkataraman (Tanjore): I oppose the amendment moved by Mr. Thomas. Clause 30 is an emergency provision. It is intended to give power to the Government in an emergency to fix the prices. Consultation with the Board would mean delay. The Board cannot be summoned without 15 days notice being given and the members of the Board are spread all over India, from Assam to Travancore-Cochin. Therefore, the purpose of this clause will be defeated if we say that the price control exercised by the Government should be done only after consultation with the Board.

Then, the reference which the hon. Minister made to consultation with the Chief Justice and all that goes to show that consultation with this body is different from the sort of consultation that the Constitution envisages. My submission is that these emergency powers intended to be given to Government to be exercised in times of emergency to tide over a crisis cannot be done if it is made obligatory on the part of Government to consult people who are spread all over the country.

Shri Punnoose (Alleppey): I rise to support the amendment moved by Shri Thomas. After all, this Board consists of various interests of the tea industry and the Board is completely under the control of the Central Government. In the functioning of such a Board, it must have certain powers and certain status, which it must be able to assert and maintain. There is no mention of emergency here. I am prepared to accept an amendment to the amendment moved by Shri Thomas that except in a very emergent situation the Board may be consulted. Also, it is absolutely necessary to impart a sense of responsibility and an abiding interest in the industry, to the Board. Therefore, I support the amendment moved by Shri Thomas.

Pandit Thakur Das Bhargava (Gurgaon): A reference to clause 31 would indicate that the Government has got powers to cancel, modify or suspend any order of the Board, so that, so far as the Government is concerned, it is invested with full powers. Now the question is whether this Board should be consulted or not. I can understand that in an emergency where the consultation with the Board may prejudice the action which the Government wants to take it may be said that delay may occur to a certain extent. I do not see any reason why we should interpret clause 30 as likely to deal with emergent cases. It may deal with non-emergent cases also, especially,—"(b) the maximum quantity which may in one transaction be sold to any person"—when this thing must be decided. I do not think any emergency comes under this. This is a very important matter, the fixation of maximum and minimum prices. I do not think this can be decided without any deliberation because it will affect all those growers, manufacturers, dealers and everybody.

We can have a rule that in emergent cases or where it is not practicable to consult the Board, the Board may not be consulted. I can understand that. If there was an amendment to this amendment that whenever it is impracticable to do so, it may not be consulted. What is the use of the Board, if the Government is not consulting the Board, if the Board is not given full powers? It is a statutory Board and the functions which have been assigned to it are of important nature. No useful purpose will be served by having a Board if it is not to be consulted in such an important matter as this.

I would submit for the consideration of the hon. Minister that so far as practicable consultation with the Board is necessary. Otherwise, it is no use having this Board. The Board will not develop any sense of responsibility if the Government in such an important

[Pandit Thakur Das Bhargava]

matter as the fixation of price does not want to take it into confidence. I should think that the very purpose of this Bill will be defeated if the Board is not consulted.

Therefore, I support the amendment moved by my hon. friend Mr. Thomas. I would not mind if the hon. Minister were to put in the words "except it is not practicable to do so".

Shri Damodara Menon: I also support the amendment moved by Mr. Thomas. My hon. friend Mr. Venkataraman said that this Board is a large body consisting of members from all parts of India—Assam to Travancore. I may make a suggestion. This Board has an executive committee which is a smaller body. I hope Government will have no objection to consult at least this executive committee before they take a decision in matters of this nature.

Shri N. M. Lingam: I have to oppose the amendment. It is forgotten in the first place that this is purely an entergency provision as my hon. friend Mr. Venkataraman pointed out.

The question of price fixation is a highly specialised job. The Board is composed of heterogeneous elements, with the conflicting claims of labour, employers, blenders, planters, etc. We cannot expect such a body to decide the fixation of prices. They can never be expected to agree on a matter of this kind objectively in the light of the circumstances prevailing in the country as well as abroad. This question must be left purely to the discretion of the Government, having regard to the world market and internal conditions. It is with this end in view that this function has been specifically taken away from the purview of the Board. So, I oppose the amendment.

Shri Barman: I have to place a few facts for the consideration of the hon. Minister on this question. The question of price fixation, both maximum and minimum, in the case of a commodity like tea is a somewhat complicated matter. Even experts find it difficult to differentiate between one quality of tea and another: it is such a difficult thing The House will be interested to know that a pound of tea which ordinarily sells at, say Rs. 1-8-0 will bring in as much as Rs. 30, if it be of a specialised quality. Now the whole thing is who shall be the judge—the board which is composed of growers, manufacturers, dealers and consumers, or the Secretariat who very occasionally deal with this matter. I doubt very much whether the officials could have any knowledge of the different varieties of tea. I would like the hon. Minister to ask his adviser whether he can tell how many varieties of tea are produced in a particular garden. I think he will answer in the negative. Government being in this position, prior consultation with the Board will be a very healthy convention, and this I think should be laid down in the Bill itself.

My hon. friend Mr. Thomas the other day said that in a simple case like tea waste Government in their eagerness to help the industry withdrew the cess; when the industry with one voice objected to that, they amended their order. From this we can infer that Government is not yet conversant with this trade and in a complicated matter like this I must repeat Government should not take the responsibility of determining the maximum or the minimum price in regard to a commodity which has got numerous qualities and different specifications. I, therefore, hope that the hon. Minister may accept this amendment, maybe with slight alteration of the wording.

As regards internal demands, if there is any misjudgment, the matter may be remedied after a few weeks, because the people interested—consumers, producers or manufacturers—will point it out. But if a mistake is committed in the case of foreign markets that will be a great blunder to our national finance. The price of tea varies from country to country; it also varies from elevation to elevation. The same kind of tea that is produced in Darjeeling or Nilgiris will sell at three times the price of tea which is produced in the plains like Doars or Cochar. So that difficulty is there. In the case of foreign markets the same kind of tea has got different markets in different countries. Government should not therefore take the risk, commit further blunders and become unpopular. It is better that prior to fixation of prices Government consults the Board composed of people interested in the industry.

Shri K. C. Sodhia: In view of the arguments advanced by Pandit Thakur Das Bhargava and in view of the fact that the Board is an expert body and the matter of determination of prices is a technical matter. I support the amendment.

Shri Nambiar (Mayuram): I support the amendment: I am for consultation with the Board. We have got a Tea Board, the Board is considered to be a Board interested to look after the industry as a whole. All interests are expected to be represented on it. Such a Board will have to be consulted in the matter of fixation of maximum and minimum prices. In that condition they must be fair to all concerned. Therefore the amendment of Mr. Thomas is very reasonable.

I would appeal to the hon. Minister to consider the question. Let it not be in the exact form in which Mr. Thomas has suggested, if it is not suitable, but in another form, but let him accept the principle and see whether he can consult the Board under normal conditions. If an extraordinary situation arises we do not press that he must consult the Board, but we say they may consult. That is the appeal I would make.

Shri Achuthan (Crangannur): I also want to support the amendment that has been moved. The Board is a consulting body. I can understand. The *de facto* position is that Government will not take a high-handed action, where there are diverse interests, in fixing the prices or in exercising other powers under these provisions. But the *de jure* fact should also be there. Government should say: we will consult the Board. We expect that there will be diverse interests. One cannot be sure whether there will be any unanimous decision by the Board in regard to fixation of prices or in regard to the exercise of any power under this clause. So this will be for the safety of the Government also in that they will be able to say, "We have consulted the Board, there are diverse views".

Suppose there is no such provision and Government exercises power under this clause. Our non-advocate Shri Thomas may come before the House later on and say the estate interests were not consulted and so on. And Government will be put in a difficult position. But if this position is there they can say, "We have consulted the Board, there were diverse views". They can thus have a *via media* so as to see that all interests are satisfied. It is for the Government's safety to see that less noise is produced in this House. Government may therefore see their way to accepting this amendment.

Mr. Deputy-Speaker: Enough has been said on this. Let us have the hon. Minister's view.

Shri A. V. Thomas *rose—*

Mr. Deputy-Speaker: Mr. Thomas supports.

Shri S. C. Samanta: Government is taking the power of control for fixing the price and distribution of tea. I think Government will not exercise the power of control except in a case of emergency, because the fixing of price is a very difficult thing as has been pointed out by my hon. friend Mr. Barman. Suppose Government fix the minimum price of tea to be one rupee per lb. If there is no buyer available to purchase the tea at that price, what will be the fate of the grower and manufacturer. The tea will go to waste, and Government surely will not like to waste such a valuable thing which earns dollars for us. On the other hand, when Government is going to fix the price of export tea, Government has no hand in it because it is controlled by the international markets. So in both the cases, internal as well as external, if Government in general goes to control it all the time, then the tea industry will go to ruin. So only in cases of emergency Government may take to control the prices of tea, and Government should be alert. I would, therefore request the Government to give an assurance to the House that only in emergent cases they will fix the price of tea.

Shri Sarmah: I submit that if we appreciate the scheme of the plan underlying this Bill we cannot support this amendment. Because, it is understandable that if the management of affairs relating to tea is left to the labourers, well, they will manage it. I name labourers first because I maintain that except for those who came into the industry during the war, or after it, the others got their capital back and what remains is the sweat and blood of the labourers as the tea estate. Therefore, let the labourers manage it. Or, it is understandable if the management is left to proprietors, or the consumers. They will manage it.

But I submit that the plan of this Bill is, as the hon. Minister explained yesterday, that Government takes control and fixes prices in an emergency. Nobody will seek to control and minimise prices if India gets better prices. Therefore, in the scheme of things, to make it obligatory for Government to consult means to respect the opinion of the Board consisting of forty or so many members; it would amount to cutting the turf from under the feet of the Government. Government with their Trade Commissioners and Counsuls in various parts of the world are in a better position to judge matters relating to price. Of course, Government will seek advice from knowledgeable quarters. But to say that democratic prin-

[Shri Sarmah]

ciples or socialist principles should be brought into consideration here in such a manner as is suggested in the amendment would be denying the underlying fundamental principle of this Bill itself. Democracy cannot be extented in that manner to come into play here in the best interest of the tea industry, Therefore, I am constrained to oppose this amendment.

Shri Karmarkar: My esteemed friend who spoke last has put the case so lucidly that I am tempted to feel if it would be better for me to exchange my seat with him on this Bill. He has correctly grasped the whole scheme of this Bill. It is very obvious and it does not require more than a cursory glance at the Bill to show that one of the principal purposes of the Bill is to take greater control in the hands of Government.

From part of the submission of my esteemed friend who spoke earlier on this particular amendment, he appeared to be impatient with the powers of the Government itself. It is obvious that under clause 31 we exercise general control, and till I listened to my esteemed friends I thought it was equally obvious that in the matter of fixing prices there are many interested parties and it is Government alone who can come objectively on the scene.

As my esteemed colleague the Commerce and Industry Minister has already stated in his opening remarks, normally the Board will be consulted. I would have been happy if Government were in a position to accept the amendment restricting it to emergencies. An emergency may not be there but Government may deem it undesirable to consult the Board, as it may happen many a time. When I was listening to the arguments about consultation with the Board in the matter of fixing prices —I will not take the time of the House —I was reminded of a small affair that I got into. I once consulted an esteemed friend of mine in respect of the import and export policy for the coming year. And he asked me innocently, what are the items to be placed in the O.G.L., so that he might be competent to give his advice. Similar is the case here. Suppose Government wants to fix prices. There are the growers' interests, the labour interests, and, in addition to them, supervening, the consumers' interests and the interests of the industry itself. I thought it was very obvious that Government were the only body that should have general control in relation to prices. The position of Government is that normally Government would continue to consult the Board in all important matters.

The point made is: why not limit it only to emergencies There would be cases, not exactly of an emergency, where action might be taken two months hence, but where it is absolutely undesirable to consult the Board having a conflict of interests. Suppose the price has to be increased or decreased ultimately. What the amendment seeks to do is to make the Government consult the Board when the price has ultimately to be increased or decreased. That leads to speculation. And I thought that was a vital objection to the proposed amendment. I regret that Government is constrained to oppose the amendment very vigorously.

Mr. Deputy-Speaker: The question is:

In page 10, line 32, after "The Central Government may" insert "after consulting the Board".

The motion was negatived.

Amendment made:

In page 11, line 10, for "(4)" substitute "(5)".

—[*Shri Karmarkar*]

Mr. Deputy-Speaker: The question is:

"That clause 30, as amended, stand part of the Bill."

The motion was adopted.

Clause 30, as amended, was added to the Bill

Clause 31.— (*General control etc.*)

Shri A. V. Thomas: There is an amendment in my name but I feel that the days of consultations, as far as Government is concenred, are over. I thought perhaps they would accept reasonable amendments. Having failed to do so, I am sorry I do not want to move my amendment.

Shri K. C. Sodhia: I beg to move:

In page 11, after line 32, insert:

"(4) The annual report of the Board together with its budget for the succeeding year shall be submitted to the Central Government who will lay it before Parliament."

After some deliberation, I have put in this amendment. As has already been stated by my hon. friend, Dr. M. M. Das, this Government by way of cess realises more than Rs. 100 crores and this Parliament has got no time to go through all the budgets and the way in which these Rs. 100 crores are spent.

An. Hon. Member: Rs. one crore.

Shri K. C. Sodhia: Not Rs. one crore, it is Rs. 100 crores.

Mr. Deputy-Speaker: All the cesses together.

An. Hon. Member: If all the cesses are put together.

Shri K. C. Sodhia: This cess is likely to bring a revenue of Rs. eight crores and this Board will be entrusted with the expenditure of this amount. Tea is a very valuable commodity which brings us so much of foreign exchange that all kinds of propaganda should be done for that and all the money that is raised will be spent for this purpose.

The Board is to spend Rs. eight crores every year and I think the hon. Minister will say that the budget of the Commerce and Industry Ministry will be placed before Parliament and Members will have an opportunity to look at it. Well, that will be simply on paper and this Parliament will have no time to go through that in detail. It was with this view that I have made an express provision in the law itself that the annual budget of the Board and its annual report should be placed before this Parliament in order that this House may see that Members of this House may have an opportunity to go through them. No doubt the cess will be realised from the foreign interests but after all it is the industry of the country that will pay.

Therefore, the general tax-payer is interested in this as much as the Government. Therefore, it is necessary that the budget and the report of the Board should be placed before Parliament so that we may know what the Board is doing and how it is spending the money. This is a very reasonable amendment and I hope Government will see their way to accept it so that this Parliament may be able to discharge its functions to the tax payer.

Mr. Deputy-Speaker: Let us have the reactions of the hon. Minister.

Shri Karmarkar: There are two points involved in this. Firstly that the annual report of the Board should be made available to the House. That is an important point. We do think it necessary that the Members should have a copy of the report. Government will consider the matter and incorporate it in the rules.

The second point is about the budget. My difficulty is this. The annual report for a year will not be ready by the time the budget estimates for the next year are due to be submitted. The budget for the next year has to be submitted during the current year itself whereas the annual report will be ready only after the close of the year. While we look upon that part of the amendment, which says that the annual report of the Board should be made available to Members of Parliament, with sympathy, we consider that....

Mr. Deputy-Speaker: Whenever it is ready.

Shri Karmarkar: The normal procedure is during the Budget discussions, it will be subject to the scrutiny of this House. It will not be practicable for us to bring the budget earlier before the House. Under these circumstances it will not be practicable for us to place the budget before the House and there is no point in placing the budget before the House unless we give the House an opportunity to discuss it. This is not practicable. In these circumstances I regret I am unable to accept the amendment.

Shri Punnoose: What is the difficulty?

Mr. Deputy-Speaker: It is only the budget.

Shri Karmarkar: When a budget is submitted, we approve some portions of it and we reject some portions. When we accept or reject, it is a final act by itself. It no longer remains a budget at all. If we place the budget before the House and ask for the House's advice on that, there is no point in constituting the Board.

Mr. Deputy-Speaker: This is only for the information of the House.

Shri K. K. Basu (Diamond Harbour): We are not satisfied with the annual report.

Mr. Deputy-Speaker: I do not think the amendment deals with anything

[Mr. Deputy-Speaker]
more than giving intimation to Parliament regarding the report.

Shri Karmarkar: The utmost that I can do at this moment is to give a promise to give the best possible consideration to this. At the moment I do not think it is practicable. Regarding the report, as I said, it is important that Members should have a copy of the report and we shall take measures to incorporate it in the rules.

Shri Punnoose: The report might be circulated but the tax-payers consider it proper to place the budget before the House.

Shri Karmarkar: I should like to correct myself. I am advised that the budget will be passed by the House from 1953-54. Therefore, there is no need for this amendment. The budget will be placed in the normal course.

Shri A. V. Thomas: This cess brings in Rs. 94 lakhs. The whole amount goes into the Central revenue. So why is that this House should not be given a statement of the amounts received and the expenditure incurred. He said the total amount given in the budget is Rs. 94 lakhs. This House should know how the money which is collected from the industry and which goes into the central exchequer is earmarked for a certain purpose. The House should know how it is spent, whether wisely or otherwise. Is it not a legitimate demand of the House? Is it not a reasonable request?

Mr. Deputy-Speaker: That is what a budget means.

Shri Karmarkar: The estimated revenue and expenditure constitute a budget. The whole thing will be placed before the House.

Shri A. V. Thomas: As far as last year's budget is concerned, only the total amount collected is given. No details of expenditure are given. We are asking only for a reasonable request. If it is not possible to incorporate it in the General Budget, a separate account should be laid before the House for their approval. Nothing more.

Mr. Deputy-Speaker: Does the hon. Member, Mr. Sodhia desire that I should place his amendment before the House?

Shri K. C. Sodhia: No, Sir.

Mr. Dputy-Speaker: The question is:

"That clause 31 stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

Clause 32 was added to the Bill.

Clause 33.—(*Licensing of brokers etc.*

Shri K. K. Basu: In this particular clause, provision is made as to licensing of brokers, tea manufacturers, etc. For the last several hours we have been discussing the position of the tea industry and its character. We know fully well that the tea industry is dominated by foreign interests. Possibly excepting jute, no other industry has the same stranglehold as tea. Apart from ownership, we have been told a number of times that in the several processes of manufacture, the Indians have no share. Even among the brokers, I am informed that only very recently one Indian firm is doing this work and this part is entirely dominated by British interests. Similarly, I am also told —I hope to be corrected if I am wrong —that in the several processes of manufacture, whether blending during the treating tea leaves or whatever it may be, there is no Indian or Indian expert in them. All these British tea estate owners, who had been in the field for a long time, and who dominate this industry, had made it a point not to allow our Indian boys to learn these processes or systems of manufacture. Also they want to keep the entire auction market whether in India or outside completely under the control of the British agency system which have tentacles in all parts in all forms of this productive unit.

When we are going to have a legislation wherein we want to bring the entire tea industry under control, I suggest that, in the interests of the nation, we must see that the provisions of the Bill are worked in a manner so that in the near future, we are in a position to Indianise the entire system. More especially, as the Government is not in a position, because they say they are committed to an industrial policy, and we are not in a position to confiscate or give quit notice to the British interests, we should make it a point to see that in the near future, in this broking business and in these processes of manufacture, we have Indian personnel, and the Indian know-how, so that they can replace the European personnel. Otherwise, as in the case of many other industries, even five or six years hence, we will not have Indian experts and we will have to bring in foreign experts. There will be dearth of Indian experts and we will be still under the clutches of persons who are not sons of the soil. Therefore, I entreat upon the Government that while exercising the powers under this clause they must see to it that in the very near future, at least these things are Indianised and we have enough Indian personnel to man these particular branches of this industry.

Shri Karmarkar: I think these are observations and do not require any reply from me. This Bill is bound to be worked in the national interests. I think it can be better worked in the national interests if every one heartily co-operates with the Government. I hope all sections of the House will cooperate with the Government......

Shri K. K. Basu: If you go on the right track.

Shri Karmarkar: ......so that we can see how best the national interests can be served.

Mr. Deputy-Speaker: The question is:

"That clause 33 stand part of the Bill."

The motion was adopted.

Clause 33 was added to the Bill.

Clause 34.—(*Power of inspection*)

Shri A. V. Thomas: I beg to move:

In page 12 lines 2 and 3, omit "or any member or officer of the Board".

Shri Venkataraman: I beg to move:

In page 12, line 2, after "any member" insert "so authorised by the Chairman in writing".

I think Government are accepting this amendment.

Shri Karmarkar: We are accepting.

Mr. Deputy-Speaker: Amendments moved:

(1) In page 12, lines 2 and 3, omit "or any member or officer of the Board.

(2) In page 12, line 2, after "any member" insert "so authorised by the Chairman in writing."

Shri Venkataraman: May I just explain the difference between my amendment and that of Mr. Thomas? As the clause now stands, any member of the Board has got the right to inspect any garden. That, we thought, might give rise to a lot of unnecessary worry and complication if, without any authority, each member started inspecting the tea gardens. Therefore, I have suggested that a member authorised by the Chairman in writing may be allowed to inspect a garden and make a report. This would be better but Mr. Thomas wants to omit the words, "any member or officer of the Board". That is, to say, he does not want to give the power of inspection to any member or officer of the Board whether authorised by the Chairman or the Board or not. That would place a member in a more disadvantageous position than if he were any other person or a private person. A member should not be in a disadvantageous or unfavourable position than any other person. So, a member authorised by the Chairman may be allowed to inspect a garden.

Shri A. V. Thomas: The clause reads as follows:

> "Any person authorised in this behalf by the Central Government or by the Board or any member or officer of the Board may enter at all reasonable times......etc."

What I want is, "Any person authorised in this behalf by the Central Government or by the Board may enter at all reasonable times, etc." I am surprised at my hon. friend's arguments. Not only a member or officer. The clause says, "Any person..." Any person means, he may be a member or an officer or somebody. What I want is that the particular person must be duly authorised by the Board. I cannot see any objection and I do not see any sense in the objection that has been raised. Because, 'any person' covers everything. I have already given my reasons. If any one without any authority, whoever belongs to the Board, anybody from a clerk to the top-most officer is allowed to run into my place at any time and inspect the estate and call for books—he can even inspect my house if he suspects that there are some books there—it makes life impossible for anybody in the tea gardens. What I ask is a very very reasonable thing. I do not object to inspection. I only want that the person who goes for inspection should be duly authorised. That is all I ask.

Mr. Dputy-Speaker: Board or Chairman: that is the point.

Shri A. V. Thomas: Board has the power. They delegate the power to the

[Shri A. V. Thomas]

Chairman. It comes to this. The authority may be exercised by the Board. Naturally, the Board authorises the Chairman. It follows. While the Board has the power, the executive authority is the Chairman.

Shri Jaipal Singh (Ranchi West—Reserved—Sch. Tribes): I submitted my minute of dissent in regard to this particular clause. In the general discussion, the hon. Minister more or less accepted my view point. I have not tabled an amendment. But there are other amendments which more or less carry out what I myself desire. As there are going to be nearly 40 members, heterogeneous, and in many ways conflicting with each other—all manner of interests are to be represented, there will be labour leaders—I visualise that there will not be harmony of interest in this Board. If any member, without the authority of the Board, without the authority of the Central Government can raid any tea estate, enter the premises and demand books, that is asking too much. I do not mind a member being authorised by the Central Government or by the Board. I have no objection to that. But, just because he happens to be one of the 40 people, if he has the right to raid any place at any time and demand anything, you are giving too much power and there is going to be harassment.

The interests of one tea estate conflict with those of another. You have labour leaders and people like that. Well, the obvious will take place. In order to obviate embarrassment and unnecessary friction, I would urge upon the Government to delete the words "any member". I have no objection to an officer. After all, he is an officer of the Government and he will be a responsible officer. In my original minute of dissent, I had included 'officer' also. But, on thinking things over, I agree with what the hon Minister said during the general discussion. After all, an officer is an executive of the Government and he has to do the job. I see no objection to his being allowed to have this power of inspection. I certainly object very strongly to any member...

An Hon. Member: Labour leaders.

Shri Jaipal Singh: Not only labour leaders; there may be a proprietor of a tea garden and he may dislike his next door neighbour. My hon. friends in the Select Committee were thinking only in terms of labour representation. I am glad of that. I am very interested that labour should be represented. I feel very concerned about this particularly. If there is any industry in India that has been built up and is maintained, the tea industry is one where the labour is predominantly and overwhelmingly Adivasi and will continue to be Adivasi.

Shri Punnoose: I entirely oppose any amendment to this clause. After all, if this clause is amended, then there is no purpose in having the Board. I quite understand that it will take some time for the industrialists to acclimatise themselves to the new surroundings. Afer all, the Central Government is taking up a certain responsibility. The Board is a heterogenous body certainly, but in the past a too much of a homogeneous body was running the whole show, and these estate managers and owners have been behaving in a fashion that is revolting to our sense of law, to our sense of equity and other things. As such, there should be complete power for the Central Government to examine their stock, their accounts, their books at any time. It is not any Tom, Dick or Harry, but any person authorised by the Central Government. He may be a member of the Board or may not be. That is no matter.

Shri A. V. Thomas: That is exactly what we want.

Shri Punnoose: Even the provision as it stands is not fool-proof. Nevertheless, I stand for the maximum amount of control over these industrialists and these estate owners, and therefore, by bringing any amendment to this clause we will be cutting down the whole plan that we are now building up.

Shri N. M. Lingam: I rise to oppose the two amendments to this clause. It envisages two sets of persons who will be allowed to inspect the estates. One is composed of those authorised by the Central Government or the Board. They may be officers going on enquiry or other officers of the Central Government. The second set of people are those from among the members of the Board itself. They do not require the authorisation either of the Board or of the Central Government. This clause was debated extensively in the Select Committee, and it was finally decided to leave it as it is because it was thought desirable to enable every member to have first-hand knowledge of conditions in the tea gardens.

Although, it is true that there are heterogeneous elements on the Board, it is absolutely necessary that these members, to be of any service to the working of the Board, should have knowledge of the various aspects of the working of the tea gardens in which they are interested.

My hon. friend Mr. Jaipal Singh was saying that he was objecting to the "raid" of any estate by any member of the Board. I do not realise how he characterises this as a "raid". If an officer goes to an estate, it is a visit, it is an inspection. If a member of the Board goes, it is a "raid". I do not know how he makes this distinction. I do not see how a member of the Board who is selected after great deliberation by the Central Government is inferior in his sense of responsibility or in equipment to an officer of the Board. We are, I am afraid, condemning the Board before it is formed. And it is this Board that you want to be all powerful in the implementation of this Bill.

Secondly, there are practical difficulties in getting the sanction of the Chairman for visiting any garden. For instance, a member of the Board in Assam has to write to the Chairman who may be at Calcutta or Delhi, and it may be days or months before he gets a reply. And it may be too late or the member may not be in a position to inspect the garden.

And then again, we do not know how the Chairman is competent to give a permission to a member. On what criteria will he base his decision to permit or refuse permission to a member of the Board. After all, a member is equal in status to the Chairman. So, if the Board is to function effectively, every member has to know all about the details of working of the tea gardens, and they must have the opportunity to go and inspect gardens. After all, he will not "raid" as the hon. Member put it. He will give reasonable notice to the estate owner. He will go and do it in a dignified way. It is unfair on his part to say that a member, if armed with this power, will abuse that power.

10 A.M.

I oppose very strongly both the amendments to this clause.

Pandit Thakur Das Bhargava: In relation to these two amendments, one moved by Mr. Venkataraman, and the other by Mr. A. V. Thomas, I support both of them. My own view is this. This is a very serious kind of power which is being given to each and every member of the Board, every officer of the Board.

Shri Punnoose: Who are authorised.

Pandit Thakur Das Bhargava: No, not authorised. I think Mr. Punnoose has not followed the exact meaning or the implication of the words.

> "Any person authorised in this behalf by the Central Government or by the Board"

and then:

> "or any member or officer of the Board."

That member or officer does not require any authorisation from the Central Government or the Board. I object to this. I object that every member of the Board or every officer of the Board should have this power. I am in favour of giving this power to the Central Government, to any person authorised by the Central Government or even by the Chairman or by the Board as the case may be, but at the same time I am very much opposed to the grant of this power to any member of the Board or any officer of the Board.

In the first place who is an officer of the Board? We do not know what is an officer of the Board. The only reference to the officers or employees of the Board is in a certain clause which gives power to the Board to appoint officers and employees. Who is an officer and who is an employee is not defined in this Bill.

Then again, we know that on basic principles relating to inspection or search of premises, every person is entitled to the secrecy, to the privacy of his estate, of his house. And it is in very exceptional circumstances that we should allow any person entry into that estate. Now, basing my objection on this ground, I want to say that only certain exceptions can be allowed to be put on this principle which are necessitated by public interest. I can understand that emergencies may arise when the Central Government or the Board may require some person to inspect the places.

What are the things which a member of the Board is being authorised to do? Let us look at the words. The words are:

> "...may enter at all reasonable times any tea estate or any place or premises where tea or tea waste is stored, kept or exposed for sale and may require the production for his inspection of any book, register, record or other paper kept

[Pandit Thakur Das Bhargava]

> therein and ask for any information relating to the production, storage or keeping for sale of tea or tea waste."

May I humbly enquire why this power is necessary to be given so that every member or officer of the Board may go to a tea estate and ask for any information relating to the estate? To have this is a very wide power, and this may lead to great embarrassment, not only to embarrassment but to great abuse. I do not say that the members of the Board will certainly abuse it, but then we have to provide against any possible abuse.

Who are the members? If you kindly see the sections from which these members will be recruited, they are of a heterogeneous character. They are:

> "(a) owners of tea estates and gardens and growers of tea."

In the definition of "owner" we have included agents as well as lessees, mortgagees etc. Now, an owner of an estate may go, if he is a member, to another estate, a rival estate, and may want to ge information which he should not get. There is no reason why by becoming a member of this Board, he is entitled to all the secrets of another estate. He may require information in regard to the method of growing tea and manufacturing tea etc. So that a rival estate owner gets all the secret information. Then:

> "(b) persons employed in tea estates and gardens"

I object very much that an employee who may be a member may get all this right to go over to any estate and then find all the things for himself which he has no right to find, and which, in the public interest, he should not be allowed to pry into. Then:

> "(c) manfacturers of tea.
>
> (d) dealers including both exporters and internal traders of tea."

I fail to see why an internal trader of tea should get this power.

So far as Parliament is concerned, it is a different matter. My submission is that looking to the heterogeneous character of the members and officers of the Board, it will be very dangerous to give this sort of power. It can very easily be abused. So I very strongly insist that Government should look into the matter rather carefully and see that this power is not made available to each member or officer of the Board.

So far as necessities go, I can understand it. Government can itself arm any person, and if a person goes there armed with the powers that Government has given, then there is no likelihood of the powers being abused. Similarly the Chairman may be given this power, but I am very loath to give this sort of powers to all and sundry people.

Shri Barman: I am also inclined to support the amendment moved by my hon. friend Mr. A. V. Thomas. The wording of the clause is:

> "Any person authorised in this behalf by the Central Government or by the Board or any member or officer of the Board".

He wants to omit "or any member or officer of the Board". If this is omitted, the clause will remain:

> "Any person authorised in this behalf by the Central Government or by the Board".

So if any member is authorised by the Board or by the Central Government, it will be all right. So also in the case of an officer, instead of making it a general provision that any and every officer is entitled to visit at any time, it is only meet that the Board should tell him to inspect any garden if any emergency or exigency arises. So if the other portion, as suggested, is omitted, I think still any member or any officer who gets the authority from the Central Government or from the Board, which I think includes the Chairman, is quite competent to do the job of inspection.

Mr. Lingam has observed that members also should be conversant with the working of the gardens. It is quite true. I do not think that if any member wants to visit a garden and wants to know about the processes that go on there, the garden owners will refuse; they will only be too willing to accommodate him. It is to their interest also that the public knows about these things. The power of inspection involves many things some of which are mentioned in the clause itself. On the other hand, if you just consider that if any member or members want to inspect a particular garden and can go under this authority at any time at their sweet will and visit and inspect everything that is provided here, it will be impossible for any garden to do its work in a businesslike way. There is no limitation of it. Probably, if he likes he can visit every alternate day and want to inspect this or that. No business concern can go in that way. If any occasion arises, certainly a member can ask the Board or the Chairman that on such and such information he wants to have an inspection, and I do not think the Chairman would unreasonably refuse permission. So there is no harm in omitting this portion. On the other hand, if the clause remains as it is in the Bill, it will cause great inconvenience to the industry which none of us like.

Mr. Deputy-Speaker: There are a number of hon. Members who want to speak. Hon. Members will, therefore, be as short as possible.

Shri T. K. Chaudhuri (Berhampore): I oppose this amendment.

Mr. Deputy-Speaker: Both? There are two amendments, one by Mr. Thomas and the other by Mr. Venkataraman.

Shri T. K. Chaudhuri: Yes, both. We discussed this clause with regard to the power of inspection very thoroughly in the Select Committee and the hon. Minister, who was Chairman of the Select Committee, said that he would be guided by the majority opinion in the Select Committee. From our side we felt that conditions in tea estates are such as to require this definitely. We should remember, in very inaccessible parts of the country, mostly in hill areas, different estate owners rule like feudal lords or jagirdars of medieval times. We heard yesterday how a few years back even the hon. Minister, Mr. V. V. Giri, when he was a Minister of the Madras Government, was prevented by a district magistrate from entering certain estate. Even though conditions have changed for the better a little, even now the estate owners in collusion with the police and local authorities wield such tremendous power that at least this power of inspection should be given to the members of the Board.

And to whom are we giving this power? We are not entrusting power to any irresponsible person. We have already the assurance of the hon. Minister that they will be nominated by relevant associations; he will accept nominations to the Board from the concerned associations, and there is the over-all power of nomination by the Central Government. After all, they will be members who can be regarded as fully responsible members of the Board and the Board itself will have the power and the Government will have the power to regulate by rules these powers of inspection. So we feel that in the interest of labour at least, this right of inspection should be there.

There is every reason to suspect, particularly in the background of the recent happenings. Conditions in estate-areas have not changed for the better. Only last February there were shootings and killings in several of the gardens in Jalpaiguri and Dooars. The workers only wanted foodstuffs, but they were given bullets! There was no enquiry held, nothing could be done, the Union officials could not go there, the whole area was cordoned of. Such were the conditions. In these circumstances, we feel it very strongly that the power of inspection should be there.

Shri Karmarkar: As I have already indicated, Government are prepared to accept the amendment moved by Shri Venkataraman. There was a good deal of discussion about this matter in the Select Committee and it was strongly felt that, apart from any person authorised in this behalf by the Central Government or by the Board members and officers of the Board also should have this privilege. Mr. Venkataraman's amendment limits the privilege given to the members, so far as we are concerned, in a salutary manner. It might be urged that any member may go round in a sort of random visit and there might be a reasonable apprehension in the minds of the parties concerned. Government feel that this amendment is very reasonable—'so authorised by the Chairman in writing'. So that there will be absolutely no reason for any such apprehensions.

Regarding the Board itself, very naturally for performing their functions they will have to have specific powers. Normally, of course, officers work under guidance; it is not as if any member or officer will go about in an erratic manner and enter any estate as he likes. He has to act under directions and he will, doubtless, act under directions. So in view of that fact, to take away the privilege given to members and officers of the Board would be unreasonable. Therefore, I oppose the amendment moved by Mr. Thomas, seeking to omit the category of members and officers, and accept the amendment moved by Mr. Venkataraman.

Mr. Deputy-Speaker: The question is:

In page 12, lines 2 and 3,

omit "or any member or officer of the Board".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, line 2,

after "any member" insert "so authorisd by the Chairman in writing".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 34, as amended, stand part of the Bill."

The motion was adopted.

Clause 34, as amended, was added to the Bill.

Clause 35—(*Power of Board etc.*)

Mr .Deputy-Speaker: I think Pandit Thakur Das Bhargava's amendment is unnecessary, because under the General Clauses Act, 'post' means 'registered post'.

Pandit Thakur Das Bhargava: Does it exclude ordinary post, Sir?

Shri Karmarkar: I think it means registered post.

Mr. Deputy-Speaker: 'Post' means always 'registered post' under the General Clauses Act. I have not got the Act here. But, has the Government any objection to have this amendment?

Shri Karmarkar: We have no objection.

Amendments made:

In page 12, line 9, before "post" insert "registered".

—[*Pandit Thakur Das Bhargava*]

In page 12, line 24, before "post" insert "registered".

—[*Pandit Thakur Das Bhargava*]

Mr. Deputy-Speaker: The question is:

"That clause 35, as amended, stand part of the Bill."

The motion was adopted.

Clause 35, as amended, was added to the Bill.

Clauses 36 and 37 were added to the Bill.

Clause 38.—(*Penalty for obstructing etc.*)

Pandit Thakur Das Bhargava: I beg to move:

(i) In page 12, line 41, after "who" add "without lawful excuse".

(ii) In page 12, line 42, omit "a member or officer of the Board or".

(iii) In page 12, line 49, for "one year" substitute "six months".

Mr. Deputy-Speaker: Is not No. (ii) barred?

Pandit Thakur Das Bhargava: It shall have to be amended in the light of the amendment of Shri Venkataraman that has been accepted.

If a member who has not the right to be there goes there, he can be obstructed. When Mr. Venkataraman's amendment has been accepted, these words have to be changed.

Mr. Deputy-Speaker: I feel what he means is this. Those words "authorised in this behalf by the Central Government or by the Board" are continued with respect to a person; the same language as is used in clause 34 should be there with the additional qualification that has been introduced in clause 34 by the amendment which has now been carried. That is necessary.

Shri K. K. Basu: I am always entitled to oppose the entry of an unauthorised person.

Mr. Deputy-Speaker: Why should there be any doubt? With authority he can go there and if he goes without authority he can be obstructed.

Shri Karmarkar: Just as the word 'member' does not require any definition, the word 'officer' does not require any definition.

Mr. Deputy-Speaker: There are persons who can go and inspect. Any person, a member or an officer of the Board or any person authorised by the Central Government or by the Board can go and inspect. A member who wants to go there need not be authorised by the Central Government or the Board. It is enough if he is authorised by the Chairman. So far as an officer is concerned, he does not require any authority from any person. That must be carried out here.

Shri Karmarkar: I think this may stand over for the time being. I shall have advice. The qualification, in the exercise of any power conferred or in the discharge of any duty imposed on him under this Act, will be sufficient.

Mr. Deputy-Speaker: This will qualify any person authorised in this behalf but may not qualify a member. Therefore, a consequential amendment must be carried out here regarding a member.

Pandit Thakur Das Bhargava: Apart from that, there are two other points which I want to bring to the notice of the House. I want the words 'without lawful excuse' to be added and at the same time I want that the punishment should be six months instead of one year. With regard to the second amendment, I only want that Mr. Venkataraman's amendment should be carried out here also.

Shri K. K. Basu: A member may go for some other purpose.

Shri Karmarkar: I accept the principle.

Mr. Deputy-Speaker: It should be, after "member", "authorised by the Chairman in writing" be added. You may formally move that amendment.

Pandit Thakur Das Bhargava: I beg to move:

In page 12, line 42, after "member" insert "authorised by the Chairman in writing".

Mr. Deputy-Speaker: Have you moved your amendment substituting six months for one year?

Pandit Thakur Das Bhargava: I have moved that also.

Mr. Deputy-Speaker: He may speak on all the amendments.

Shri Punnoose: I have got some doubts. If a member authorised by the Chairman goes to an estate, say 'A' does it mean that the Chairman must authorise him to go to estate 'A' or can it be a general authorisation referred to in Mr. Venkataraman's amendment?

Mr. Deputy-Speaker: The authority may be general or specific. In this penalty clause we cannot have all those provisions as in clause 34. Now we are restricted to clause 38. The words 'obstructs a member authorised in writing by the Chairman in this behalf' will be all right.

Shri Venkataraman: 'In this behalf' is not necessary because we have said previously, 'so authorised by the Chairman'. When we say a person authorised by the Chairman, it would mean authorised for the purpose.

Pandit Thakur Das Bhargava: I was submitting, Sir...............

Mr. Deputy-Speaker: We want to close it at 11-15 A.M., that is, all the stages of the Bill. We have already spent five hours over this, three hours yesterday and two hours the other day. We have already had five hours. We have three hours today. We have started at 8-15 A.M. without the Question Hour. It should be finished by 11-15 A.M.

Shri Nambiar: For the third reading we should have three hours.

Mr. Deputy-Speaker: In all eight hours. I am not going to extend the time.

Shri Karmarkar: Shall we finish it at 11-15?

Mr. Deputy-Speaker: Yes, we should.

Pandit Thakur Das Bhargava: I will be very brief. I am anxious that my amendments should be gone through. They are very important. If you kindly read or consider the comparable sections in other penal laws, if you read the Penal Code it would appear as if obstruction is not defined. We do not know what is obstruction. It may be with force or without force. There are many rulings on this point, as to what is obstruction. But the words here used are 'obstructs a member'; in other comparable laws, we find other words used. In section 186 of the Indian Penal Code, the words used are, 'Whoever voluntarily obstructs...............' "Voluntarily" is defined in section 39 of the Indian Penal Code. Similarly if you see section 228 there also the words are quite different. There the words are: "whoever intentionally offers any etc." My humble submission is that the mere word obstruction may be productive of many complications. So my amendment is a mild one.

Secondly, as regards punishment, one year is too much. The punishment

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provided in section 186 of the Penal Code is only three months or Rs. 500, fine, or both. Under the provisions of section 228 I.P.C. the maximum punishment is six months, or a fine of Rs 1,000. Therefore, there is no reason why we should make the offence punishable in the manner in which it is sought to be made here.

Shri Karmarkar: There can be no question of any lawful excuse for obstructing against the provisions of this Bill. There is a great danger in our following everything in the Indian Penal Code.

This provision is very simple. Any person who obstructs a member in the exercise of powers conferred on him renders himself liable under the Bill. If there were any lawful excuse that would have been laid under the provisions of this Bill itself, there is no exception for any obstruction so far as this Bill is concerned. We want to make every obstruction illegal.

So; so far as the first amendment is concerned we are strongly opposed to it.

Regarding the reduction from one year to six months, this has also been carefully considered and Government are not in a position to accept the amendment.

Mr. Deputy-Speaker: The question is:

In page 12, line, 41, after "who" add "without lawful excuse".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, line 42, after "member" insert "authorised by the Chairman in writing".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 12, line 49, for "one year" substitute "six months".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 38, as amended, stand part of the Bill."

The motion was adopted.

Clause 38, as amended, was added to the Bill.

Clauses 39 and 40 were added to the Bill.

Clause 41.—(*Penalty for contravention etc.*)

Pandit Thakur Das Bhargava: I beg to move:

In page 13, lines 9 and 10, for "contravenes any order made under sub-section (1) or sub-section (3) of section 30" substitute "charges or pays more or less than the maximum and the minimum price fixed under section 30".

You will be pleased to observe that clause 41 says that if any person contravenes any order made under sub-section (1) or sub-section (3) of section 30 he shall be punishable with imprisonment, etc. Section 30 only says that the Central Government may, by order notified in the Official Gazette fix the maximum and the minimum price. This penal clause 41 does not say anything about an act on doing which he will make himself liable for the consequences. How is the contravention to be made? To me the provision is meaningless. In a penal clause Government should see that it clearly defines a particular act or acts which if a person does he makes himself liable. The penal law of a country should be quite definite, quite precise and quite certain of what a person should or should not do. But this clause does not indicate anything. I have, therefore, tried to give concrete shape to this offence.

Shri Karmarkar: The order will say that a grower shall not charge more than a particular price.

Pandit Thakur Das Bhargava: This should not be allowed to become vague. Government should indicate with exactness and precision what the offence that a person commits is.

Shri Karmarkar: We shall so frame our orders as to carry out the hon. Member's object.

Mr. Deputy-Speaker: The question is:

In page 13, lines 9 and 10, for "contravenes any order made under sub-section (1) or sub-section (3) of section 30" substitute "charges or pays more or less than the maximum and the minimum price fixed under section 30".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 41 stand part of the Bill."

The motion was adopted.

Clause 41 was added to the Bill.

Clause 42.— (*Other Penalties*)

Shri Punnoose: I beg to move:

In page 13, line 20 after "Act" insert:

"or any provision of any law relating to labour and its condition".

By this amendment I want to make the law effective with regard to amelioration of the conditions of labour. Certain pieces of legislation have been passed by Parliament. But in certain States these laws are not observed at all. For example in the case of the Plantation Labour Act and the Minimum Wages Act, even though they are on the statute book they are not observed, they are not implemented by many of the estate owners. If by enacting this legislation it is our intention to serve the tea industry as such, we must give some amount of help to the working class. Provision has been made for all others, and some amount of safety has been given to every other interests. I suggest that the worker also should be provided for.

The condition of labour in the estates is that at any moment they can be not only retrenched, but they may be asked to go some hundred or two hundred miles away from their homes. Instances are not wanting where managements have retrenched them and have asked them to clear out at a moment's notice. All these are causing great hardships to labour. I would therefore request that this amendment may be accepted and that some amount of safety and security be given to the worker too in the scheme of things.

Shri Venkataraman: I think it is an elementary principle of legislation that offences in respect of a particular Act are made punishable under that Act. If there is any offence committed under the Tea Act, then it is punishable under the Tea Act. Similarly, if an offence is committed under the Minimum Wages Act or the Plantation Act, it is punishable under the respective Act. Therefore, it would be a rather odd way, if not altogether out of order, if we now say that any violation of any provision relating to labour will be punishable under this Bill which we are contemplating. The proper thing is that the offence should be punished under the Act concerned. I do not think, therefore, that it is necessary to have this amendment.

Shri Karmarkar: We feel that this amendment is irrelevant to this Bill. We oppose it. Any amendment to the labour laws should be made when those laws come up.

Shri Nambiar: We are only seeking protection against unjustified retrenchment

Mr. Deputy-Speaker: But it cannot be taken up anywhere we like

The question is:

In page 13, line 20, after "Act" insert:

"or any provision of any law relating to labour and its condition".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 42 stand part of the Bill."

The motion was adopted.

Clause 42 was added to the Bill.

Clause 43. — (*Offences by companies*)

Pandit Thakur Das Bhargava: I beg to move:

(1) In page 13, for clause 43, substitute:

"43. If the person committing an offence under this Act or the rules thereunder is a company, the company and if it is proved

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> that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company such Director, Manager, Secretary or other Officer shall be deemed to be guilty of that offence and liable to be proceeded against and punished unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

(ii) In page 13, for clause 43, substitute:

> "43. If the person committing an offence under this Act or the rules thereunder is a company, the company and if it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and liable to be proceeded against and punished."

I would very humbly request you to consider the gravity of this matter. In every law, especially in laws relating to offences by companies we find that Government are anxious to see that even persons who do not commit any offence come within the grip of the law. Their fear is that these big people who are in charge of the companies may escape.

Mr. Deputy-Speaker: The only point here is that the burden of proof is shifted to the other side.

Pandit Thakur Das Bhargava: It is not merely that. Even those who are absolutely innocent are made guilty. I shall explain the gravemen of my complaint by reading out the clause:

> "If the person committing an offence under this Act, or the rules thereunder is a company, every person, who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly."

Mr. Deputy-Speaker: But you may read the proviso.

Pandit Thakur Das Bhargava: I have seen the proviso. It will only operate if the main provision operates; otherwise, the proviso is meaningless.

Mr. Deputy-Speaker: If you read the proviso, he will not be liable. It is only a question of burden of proof.

Pandit Thakur Das Bhargava: He would be liable. You can only put responsibility on me if I have done anything. Why do you put the responsibility on even a person who is absolutely innocent to prove that he is innocent? He is not at all guilty. I can understand that in certain cases the burden of proof may be shifted on to the accused. A person may be found in possession of stolen property. In that case, the burden of proof is upon him. But in this case, the offence is not proved.

Mr. Deputy-Speaker: If this provision is not there, Government fear that the man may escape.

Pandit Thakur Das Bhargava: He will not escape. You have sub-clause (2) which says:

> "..where an offence under this Act or the rules thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Even those persons who connive at the offence or are guilty of neglect are roped in and roped in rightly. If a person is guilty of doing or not doing a thing, or of neglect, I can understand that person being made chargeable, but if a person has done nothing and is merely responsible for the conduct of busines of the company in the capacity of a welfare officer or medical officer, why should he be roped in on the ground that he is responsible for the conduct of the bussiness of the company? He is absolutely unconnected with the offence. They have no hand in the offence and yet, those who are in authority may show them up and the burden of proof will be on these persons. In ordinary cases, I have seen that such people are not *challaned*. They are big people. When challaning takes place, only absolutely innocent people who have nothing to do with the offence are challaned and punished. In a recent case in Meerut, several very respectable persons were put to the indignity of having to go to jail. Of course, they were acquitted on appeal. But, for nothing they had to go to jail. They had done absolutely nothing. In cases where managing agents are in charge, I want to know that the directors have to do with any offence. They go to the board meeting; do their business; pocket their fees and come back. They do not do anything else. But according to this provision, in cases where there are managing agents, even those who are not guilty and who have nothing to do with the offence may be brought in.

I do not want any person who may have something to do with the offence to get away. On the contrary, I want them to be roped in, and I am glad that clause 43 has a provision that even a director or manager, secretary or other officer of the company who has connived at the offence, or is guilty of neglect, will be liable. I do agree that even such persons should be proceeded against, if they have not done their duty. But if we make laws through which innocent people can be roped in, and through which without doing anything a person can be brought under the purview of the law, then I submit that we are doing a very wrong thing. I can understand the fear that these big people may get away and I too do not want them to get away. I am in agreement so far as this principle is concerned, but at the same time, I do not want that absolutely innocent people should be brought before the court on account of the mere fact that they are big people. This is a wrong thing. We should make right laws and enforce them. If we make wrong laws and do not enforce them, we are guilty both ways.

My humble submission is, therefore, that this question may be examined in a dispassionate manner. I submit that within the mischief of the words "every person, who at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company......" you can enmesh even persons who have absolutely nothing to do with the offence. I am anxious that those persons who come within the mischief of sub-clause (2) should be proceeded against because after all, even neglect is of importance, even though it is not ordinarily a culpable offence. But I am in favour of making even neglect a culpable offence, so that these big people also may come under the clutches of the law if they are negligent. But to go further than that is nothing short of going to the extreme. It is not fair to rope in people who may have done nothing, and enmesh them. I would very humbly ask the House to consider this matter dispassionately and not be carried away by the fact that these persons will put in some scapegoats before the court and get away. If they are innocent, they should get away. If there are cases where they are not innocent, there are other provisions under which even scapegoats are proceeded against. But, to have a provision like this one, under which even absolutely innocent persons can be proceeded against, is unjust, arbitrary and wrong.

Shri Venkataraman: I think this is the third or fourth occasion on which Pandit Thakur Das Bhargava and myself find ourselves on opposite sides on this particular clause. For the last few years we have adopted a penal provision with regard to offences relating to companies, and this has been consistently followed by this Parliament. That is, where a company commits an offence every director or every person responsible for the conduct of the affairs of the company should be *prima facie* held liable unless he proves......

Mr. Deputy-Speaker: Under the control Act. In a normal Act......

Shri Venkataraman: This is also a control Act. This Tea Act is a control Act. In the Industries (Development and Regulation) Act we have the same clause as also in the Industrial Disputes Act. My hon. friend Pandit Thakur Das Bhargava argued the same point very strongly on the last occasion also in connection with the Industries (Development and Regulation) Act. Where an impersonal authority is in charge of the affairs and you are not able to foist the liability on one particular individual, then the persons who are responsible for the conduct of the affairs should be *prima facie* held liable unless they prove that they have had no knowledge or nothing to do with it. My hon. friend Pandit Bhargava knows very well that if you do not put it, companies have the habit of appointing, what we call familiarly, 'plead-guilty' managers. In the Factories Act every manager who commits an offence is liable for fine. Managing directors and others, responsible people in the company, in order to escape

[**Shri Venkataraman**]

liability, always appoint a manager under the Factories Act, who goes and pleads guilty and a fine of Rs. 100 is imposed. It is to prevent this sort of abuse that the legislation has been changed consistently for the last few years, whereby in the case of offences by companies the *prima facie* liability is foisted on those who are in charge of, or conduct the affairs of, the company unless they prove that they had nothing to do with it. Therefore, this is also a control Act like the Industries (Development and Regulation) Act. This provision is very necessary. Otherwise, it would lead to a lot of confusion.

Shri Nambiar: I too find that we and the Government are on the same side on this issue. We say we cannot allow this clause to be watered down in view of the conditions prevailing in this industry. We know that the conditions and methods in the tea plantations are worse than feudal. And these people will sign and do anything against the interest of the whole industry or the staff or workers, and will get out of the clutches of law. There must be rigorous provision to catch every one of them who is responsible. The clause says "every person who at the time the contravention was committed was in charge of and was responsible to the company". It is the person who is in charge and responsible. Only that. It does nat mean that his wife or children or somebody else may be dragged into court and that any innocent person will be dragged to court.

Shri Sarmah: Put the family also if you like!

Shri Nambiar: It says the person in charge at the time of the contravention, at the time of the occurrence. That does not mean that everybody can be caught hold of. This provision is necessary. I think some more rigorous provision should be there. But, of course, Government has taken this and I support the Government and oppose the amendment moved in this respect.

Shri U. M. Trivedi (Chittor): I support Pandit Thakur Das Bhargava in the very nice principle of law that he has enunciated. It is clear we must have some power. But unfortunately we are all as I noticed yesterday, children of certain principles of law. Here we are all children of our precedents. In our Control of Prices Act we have similarly provided that in the case of companies offenders be as have been put in here. However much we tried we were not able to water down that particular provision in the same language in which Pandit Bhargava wants to have it today. We had a similar discussion on the Forward Contracts, Bill, and the very principle was discussed. At that time we did not open our eyes and we still persisted that we should go on like that because we have followed it in the Control of Prices Act. The same thing is here before us. As Mr. Venkataraman said, this is a control Act. We are very sorry that we will not be able to accept this amendment in this particular Bill because we have already got similar provisions in the previous Acts. Therefore, unless a separate provision is made in law to define such offences by companies, we will not be able to have the amendment as sought by Pandit Thakur Das Bhargava. Otherwise, it is well worth giving our attention.

Shri Karmarkar: We do not accept the amendment. The reason is very obvious. His object is that no one who is really responsible should escape the clutches of law. That is looked after by sub-clause (1) of clause 43. It says "every person in charge". That will have to be rigorously proved by the prosecution. That burden is on the prosecution—that the person is really in charge of the company and was responsible to the company. After that burden has been discharged by the prosecution I really wonder how my lawyer friend ....

Pandit Thakur Das Bhargava: Not responsible or in charge of the matter with regard to which an offence has arisen, but of the general business of the company—for instance a doctor, engineer or any other person not connected with the matter from which an offence has arisen.

Shri Karmarkar: I was just on that point. So the first idea is that no person really in charge of the company should escape under a make-believe reason. He is held responsible in all that happens in the subject-matter of his charge. I appreciate what my esteemed friend said. There is sub-clause (2) which provides for the innocents. But he is really pleading for people who might be included among the guilty, those who are really in charge—they may not ostensibly look so; it may be the director or manager or somebody else; it is not they, the innocents, he is seeking to protect. He is trying to protect those whom we want to get at: So the persons in charge of the company must be responsible for the company's acts.

And secondly, sub-clause (2) makes it clear that "notwithstanding any thing contained in sub-section (1) where an offence under this Act...has been committed by a company and it is proved that the offence has been committed with the consent or connivance of—etc." We require greater emphasis. It will be for the prosecution to prove that it was with the consent or connivance of the director or manager. It is only under such circumstances that the director or manager will be liable.

Under these circumstances the provision is very salutary and if really guilty persons have to be brought to book I am very sory to note that my learned friend's amendment does very little service towards that cause.

Mr. Deputy-Speaker: The question is:

In page 13, for clause 43, substitute:

"43. If the person comitting an offence under this Act or the rules thereunder is a company, the company and if it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company such Director, Manager, Secretary or other Officer shall be deemed to be guilty of that offence and liable to be proceeded against and punished unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, for clause 43, substitute:

"43. If the person committing an offence under this Act or the rules thereunder is a company, the company and if it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and liable to be proceeded against and punished."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 43 stand part of the Bill."

The motion was adopted.

Clause 43 was added to the Bill.

Clauses 44 to 47 were added to the Bill.

Clause 48. —(*Suspension etc.*)

Shri Punnoose: I have an amendment to clause 48.

Mr. Deputy-Speaker: It is the same thing.

Shri Punnoose: When suspending the Act or withholding for the time being the exercise of certain provisions of the Act the minimum that Government has to do is to consult the Board on such occasions. It is an Act passed by Parliament after prolonged discussion, and when that has to be relaxed or suspended, at least the Board has to be consulted. Without that provision the Board, according to me, cannot function in a responsible manner. And the Board will be entirely a Government show. I do not mean that Government will be irresponsible to it. What is the harm in consulting the Board? With regard to the fixation of price and other matters, there may be some point in saying that India is a vast country and members from Assam and Travancore have to be consulted but when the extreme step of suspending the Act is taken, the Board has to be consulted and I believe it will be accepted.

I beg to move:

In page 14, line 17, after "Central Government may" insert "after consultation with the Board".

Shri Karmarkar: I do not want to tire the House. It does not appeal as a reasonable amendment and I oppose it. I do not want to waste the time of the House at this stage.

Mr. Deputy-Speaker: Government will ordinarily consult the Board before scrapping it.

Shri Punnoose: Even that is not reasonable.

Shri Karmarkar: In important matters the Board will be consulted.

Mr. Deputy-Speaker: The question is:

In page 14, line 17, after "Central Government may" insert "after consultation with the Board".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 48 stand part of the Bill."

The motion was adopted.

Clause 48 was added to the Bill.

Clauses 49 and 50 were added to the Bill.

Clause 51.—(*Repeals etc.*)

Pandit Thakur Das Bhargava: I beg to move.

(i) In page 16, line 37, after "replaced" add:

> "except to the extent that the pending prosecutions and proceedings shall be continued and offences committed against the relevant penal provisions of these Acts up to the time of repeal of these Acts shall be punishable and may be dealt with as if these provisions were not repealed."

(ii) In page 17, omit lines 14 to 17.

My reason for moving these amendments is contained in article 20 of the Constitution which runs thus:

> "No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence......"

I am at one with the Government. I do not want to defeat their purpose. If any person has violated the provisions of sections which were subsisting at the time when the offence was committed, then a prosecution may be continued and those persons who have not been *challaned* may be *challaned* and punished according to the provisions of the Act but at the same time I do not think it will be fair and legal to have a provision like this. Sub-clause (6) reads as follows:

> "Any offence punishable under the Indian Tea Control Act, 1938, or the Central Tea Board Act, 1949, shall be punishable and may be dealt with as if it were an offence punishable under the corresponding provision of this Act."

I do not think it is legally allowable to have a provision like this. In regard to the purport of this provision, there is no difference between myself and the Government. I want those persons to be punished but I am afraid that these provisions will not be legal. They could not be punished under the corresponding provisions. They could only be punished under the old provisions.

Shri Venkatarman: The first amendment is unnecessary because it is governed by the General Clauses Act. Section 6 of the General clauses Act provides for continuation of criminal proceedings.

Pandit Thakur Das Bhargava: There is no need to enact this. I quite see that.

Shri Venkataraman: Therefore, there is no need for this amendment.

11 A.M.

So far as the other amendment is concerned, offences which are in the corresponding Act could be punished as if they were offences under the other Act. We are not introducing a new principle of law. Certain acts which would be offences under the old Act would be continued if they were offences under the new Act.

Pandit Thakur Das Bhargava: Could the offences be continued under that Act? This is the point at issue, According to the Constitution, they could not do that.

Shri Venkataraman: What the Constitution prohibits is by a retrospective legislation an act which was not an offence on the date it was committed, cannot be made an offence subsequently. But if an offence was committed under some other Act, it can be made an offence under a subsequent Act.

Mr. Deputy-Speaker: The question is:

In page 16, line 37, after "repealed" add:

> "except to the extent that the pending prosecutions and proceedings shall be continued and offences committed against the relevant panel provisions of these Acts up to the time of repeal of these Acts shall be punishable and may be dealt with as if these provisions were not repealed."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 17, omit lines 14 to 17.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

> "That clause 51 stand part of the Bill."

The motion was adopted.

Clause 51 was added to the Bill.

Clause 1.— (*Short title etc.*)

Mr. Deputy-Speaker: The question is:

> "That clause 1......"

Dr. M. M. Das: In the long title we have got an amendment.

Mr. Deputy-Speaker: I do not find it.

Pandit Thakur Das Bhargava: It has already been disposed of.

Dr. M. M. Das That is wrong.

Pandit Thakur Das Bhargava: We considered that amendment about development and regulation.

Mr. Deputy-Speaker: I will take up long title afterwards.

The question is:

> "That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

Long title

Dr. M. M. Das: First of all I want to submit that the grounds on which the amendment was discarded were absolutely wrong. The hon. Minister when discussing a similar amendment of Mr. Punnoose yesterday pointed out that he has got the constitutional authority regarding the word 'development' here. The tea industry is a cent per cent agricultural industry and Central Government has no right to make plans and programmes for its development.

Mr. Deputy-Speaker: This is barred by the decision we took in clause 2. The hon. Minister also referred to the same. It was sufficiently discussed here. Unless it is declared by an Act of Parliament, the House will not have any jurisdiction. Therefore, it was voted out.

Shri K. K. Basu: We want a ruling on the point.

Mr. Deputy-Speaker: I said so and I asked the House to vote it. I brought it to the notice of the House and the House voted it out. This is barred. Long title cannot be anything different from the body of the Bill.

Shri K. K. Basu: We have item 52 in the 7th Schedule of the Constitution under which Parliament can declare by law.

Mr. Deputy-Speaker: The same matter was argued yesterday.

Shri K. K. Basu: You did not give any ruling.

Mr. Deputy-Speaker: Such things need not be ruled out of order but I leave them to the House to decide and the House has given its opinion and disallowed the amendment. The same thing is sought to be incorporated in the long title. I am afraid it is barred.

The question is:

> "That the Title and the Enacting Formula stand part of the Bill."

The motion was adopted.

The Title and the Enacting Formula were added to the Bill.

Shri Karmarkar: I beg to move:

> "That the Bill, as amended, be passed."

Mr. Deputy-Speaker: Motion moved:

> "That the Bill, as amended, be passed."

It is now 11-15. We want to close it but more Members are anxious to speak. Therefore, shall we sit for half-an-hour more in this matter?

Hon. Members: Yes.

Mr. Deputy-Speaker: I will call the hon. Minister at 12.

Shri Karmarkar: At 10 minutes to 12.

Mr. Deputy-Speaker: The time limit for speeches will be ten minutes each.

An Hon. Member: Five minutes.

Mr. Deputy-Speaker: I shall try to distribute it.

Shri H. N. Shastri (Kanpur Distt.—Central): I have great pleasure to accord support to the Bill as it has emerged in its final form.

I have no doubt that if the measure is properly implemented in the spirit in which it was conceived, it will go a long way in putting the tea industry on a stable basis. I only hope that this measure will have a better and more active career than the Plantation Act which is still put in the cold storage.

I am unhappy of only one thing which I beg to state briefly here. I regret that the Government did not see their way to accept the amendment to the effect that provision be made for investigation into the affairs of the industry by giving them directions for better administration and for taking over direct control and management thereof. When the Industries (Development and Regulation) Bill was originally brought forward, before this House, last year, a point was raised by some Members including myself that the tea industry be included as one of the controlled industries. At that time, objection was raised by the Government in regard to that suggestion. It was stated that since a separate Bill in regard to the tea industry was coming up, this question would be considered at the opportune moment. It was therefore to me a surprise when the Tea Bill came up before Parliament, there was no such provision in regard to the taking over of tea estates when it was deemed necessary. The matter was then commended to the Select Committee. In the mean time there was a discussion again on the Industries (Development and Regulation) Amendment Bill.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

At that time, the point was again stressed by some Members that tea may be included in the Schedule of the controlled industries. As I was not present in this House at that moment, I read a report of the speech made by the hon. Minister of Commerce and Industry on the occasion. In the course of his speech he is reported to have said that the report of the Select Committee would be coming up before the House and that this particular aspect could be considered. At that time, we were hopeful that when the Tea Bill came up before the House after the report of the Select Committee, perhaps, that aspect would be considered by the Government. But, for reasons best known to them, Government have not seen their way to accept that.

Shri P. T. Chacko (Meenachil): Constitutionally, they cannot do it.

Shri H. N. Shastri: It is common knowledge by now and will established by facts and borne out by experience that the crisis that the tea industry has been faced with some time ago was the outcome among other things of a grossly mismanaged state of affairs with the result that though the industry enjoyed a period of unprecedented boom and prosperity during the post-war period, it miserably failed at the hour of trial. Under the pretext of high wage cost, the industry managed to dupe the Government into reconciling itself to a wage cut by the abolition of grain concessions. It is a pity that the Government succumbed to the trap laid by the industry unmindful of the fact that while the employers succeeded in their game in reducing the already too low wages, on the other hand, the exorbitant cost structure of the industry remained intact.

Last year I had an opportunity to represent the workers of India in the 35th session of the ILO Conference. When speaking on the problem of productivity, I had quoted certain figures of the average wage of a worker in the tea industry and that of a manager in tea estate. I do not propose to tire your patience by quoting at length the comparative wages of a worker and a manager in a tea estate. In a minute I would say that while the wage of a tea worker in an estate is on an average Rs. 40 per month, that of a manager in a tea estate is, monthly salary—this is just an average—Rs. 1,350, allowance Rs. 150, children allowance Rs. 150, servant allowance Rs. 270, car allowance Rs. 250, an addition of five servants equivalent to Rs 200, furnished house Rs. 500; that is to say Rs. 2,870. Over and above that, he is entitled to pension, passage back home and a share in profit ranging from Rs. 10,000 to Rs. 75,000 annually. The only way in which this top-heavy expenditure is sought to be retained by the industry is by subjecting labour to sub-human conditions of work. This is a state of affairs that has to be set right if not today, at least tomorrow by the Government if the industry is to survive.

Dealing a little further with the question of gross mismanagement and top-heavy expenditure, I would only give the comparative figures in a minute in regard to the expenditure in the Assam sector and in the southern sector. You will find a remarkable difference even in one country as between two regions about the cost structure of the industry. Taking the total expenditure in the Northern India sector comprising Assam and Bengal, the cost of production per pound of tea is about 20 annas while in the south the cost of production per pound is about 15 annas: a difference of five annas in the expenditure.

Coming now to the details, I will only read a few items. In the Assam sector, the expenditure on coal and fuel is 0.99 anna per pound while in the south it is 0.44. In establishment, the total cost per pound is five annas while in the south it is less than 3 annas.

I do not desire to tire the House with figures. But, my submission is that if there was any case for control of any industry, if there is any case for going into the mismanagement of any industry, if there is a case for taking over any industry, the highest priority must be allotted to tea. For reasons best known to them Government have not deemed it fit to bring this measure, in this respect, in line with the Industries (Development and Regulation) Bill. But, I support the Bill in the hope that Government will grow wiser by experience and come out with an amending Bill before it is too late.

Shri N. M. Lingam: It has been said that the establishment and growth of the tea industry is one of the great commercial romances of the 19th century. If the industry was a romance in the 19th century, it faces now a period of trial. Its potentialities for good are immense, but if the industry is not tackled by Government in the best way, the results to the country will be ruinous.

Because of the industry, we are able to provide employment for a million people and earn foreign exchange and contribute to the economy of the country in a great measure. So, it becomes incumbent not only on the part of the Government, but also on the part of the employer and labour to co-operate and see that this industry grows from strength to strength.

I need hardly emphasize in this connection the need of Government to develop the industry in certain directions which have not been indicated in the Bill so far. For instance, Government, so long as they were receiving their revenue, were allowing the industry to fend for itself. I refer particularly to the failure of the Government to open research stations for the study of the industry. There are to my knowledge one or two research stations for the industry, one in the south and one in the north run solely by the industry itself, but Government through the Indian Council of Agricultural Research has done nothing to stop, for instance, pests like blister blight and mosquito blight extensively prevalent in the gardens of the south.

There is another danger. If the European interests which own 80 per cent of the industry decide to leave, as they attempted to do after the war by opening plantations in South Africa, there will be a vacuum in the industry in the country Government must be prepared to take over the industry. They must understand fully the ramifications of the tentacles of the industry over every phase of it—planting, marketing, external trade and all aspects of the industry and be ready to meet the crisis at any moment. I would like to repeat that Government have been complacent, and Government have to wake up to the seriousness of the situation and realise the perils of not rising to the occasion.

I have one word to say about the small gardens which form about three to four thousand in number of the tea gardens in the country. These gardens, as I had occasion to point out, are located in hill stations and the Rajaram Rao Committee has, in its

[Shri N. M. Lingam]

report on the estates in **Darjeeling**, observed as follows:

> "The production per acre is small and as the gardens are situated on mountain slopes, the maintenance costs are high. It has been pointed out that far more time and money are spent in Darjeeling in overcoming the difficulties presented by Nature than in any other Tea area in Northern India and this factor alone is stated to have raised Darjeeling's costs. The terrain and the nature of the bushes are such, that the labour put in is not very effective. Our own Cost Accountant's figures confirm that the cost of production of one Estate in Darjeeling was from 28 as. to 32:4 as. against a weighted average of 20·50 as. for North India."

If this argument holds good for Darjeeling it has great force in respect of the estates in the south. And if that is the position with regard to the bigger estates in the hill stations, you can imagine the plight of the small growers in the hill stations. So, I would earnestly urge upon the Government the need for giving the maximum freedom to these small gardens to develop so that they may become economic units. They should exempt these small estates, in fact the estates in the hill stations as a whole, from the operation of the provisions regarding control of extension of tea. The extension of tea in hill stations not only provides an economic basis for the estates themselves and employment for the people in hill stations who have no alternative employment, but also serves the purpose of preventing soil erosion which the hill stations are otherwise subjected to. So, from every point of view it is very necessary to give the maximum concession to estates in hill stations so that they may contribute to the development of the industry.

Then, there is the fact that the tea grown in the hill stations is generally of a high quality, and if we need anything today more than any thing else, it is improvement in the quality of tea. It is in the fitness of things that we should encourage quality production of tea which is possible only by increasing production of tea in hill stations.

As the hon. Minister pointed out yesterday, the new Act is not a Magna Carta for all the ills which beset the industry today. It cuts new ground in that it tries to control the quality, distribution and price of tea. And the effectiveness and adequacy of its provisions will be tested only in its actual working. But even so, it does take a right direction in the development of the industry, and it is up to all of us to see that the provisions are implemented successfully.

With regard to labour, there are various Acts dealing with their welfare—the Minimum Wages Act, the Plantation Labour Act and the Industrial Disputes Act. My own feeling in this matter is that the plantation labour be brought under one enactment so that their welfare may be governed by such an Act. For instance India is a member of the International Labour Organization, and that organization has said:

> "India is a member of the International Labour Organization but in spite of several warnings, by the Permanent Agricultural Committee of that Organisation, of the dangers of attempting to apply urbanised industrial and factory legislation to agricultural industry, such legislation in India has been applied indiscriminately to the Tea industry with crippling results in most cases upon costs of production and regulation of the labour force......"

So, I would suggest that one enactment is brought forward to meet adequately the needs of the plantation workers in India.

Finally, I would end my short say on the subject with a note on the philosophy of tea. I have a tendency to philosophise on everything. The philosophy of tea according to me, is like the philosophy of our land itself. It has been said that the influence of our culture has been slow and imperceptible and unperceived. I feel that now Indian tea has become so much associated with our way of life that it has become the handmaid of our foreign policy and as has been pointed out by the Rajaram Rao Committee's report, if the two great powers, the U.S.S.R. and the U.S.A. take kindly to our tea many of the problems and ideological differences will be solved and every sip of that beverage in those two countries will have blessings before it, peace before it, and will bless the sipper, the taker and the giver, and instead of occasional storms over the cups, it will not be long before these two powers will join the chorus and sing: "This sober sage this venerable liquid, the welcomer of the morning, the comfort of the noon and the solace of the evening, what will the world do without tea".

I wish the Bill godspeed and give it my whole-hearted support.

Shri Damodara Menon: We are at the last stage of passing this Bill.

The last speaker spoke of the philosophy of tea. I think it is because of that philosophical attitude probably that the consideration of this Bill was more or less interrupted from time to time. We took up two other Bills in the meanwhile and passed them. and the Tea Bill came very much like cups of tea to relieve the strain of hard work connected with the other Bills.

I welcome this Bill in so far as it is an attempt to bring under control by a stricter measure of governmental authority an industry which is vital to our national growth. But I must express my disappointment that this Bill does not go far enough. The hon. Minister, when moving this Bill made certain observations which heartened me. He said—I am quoting him:

"....that since 1931 this industry had an uninterrupted period of prosperity, and unfortunately, if we did not build up reserves, both for the purpose of wage equalisation and also for meeting losses, there must be something radically wrong somewhere and, more than anything else, this fact demands that the Government should become a conscious and deliberate partner in this industry rather than abdicate their rights in favour of one or other types of vested interests which are engaged in this industry."

So, I understood from this that the Government was to become a conscious and deliberate partner in this industry. Viewed from that standpoint. I say I am rather disappointed that this measure does not go far enough. There is no attempt in this Bill to make the Government a conscious and deliberate partner, and if the Government take up that role, then it will be impossible for them to see that the profits are not taken away by foreigners for their own interest, and that proper reserves are built up so that there may be wage equalisation and also the country's economic interest is properly looked after. I hope that the Government at least in the near future will bring forward a measure which will be in consonance with the policy that the hon. Minister has expressed.

We all know that this is an industry in which foreign vested interests have taken deep root. We have attained political independence but the tea industry is an example of our economic bondage to foreign interests. The earlier we are able to get rid of this bondage, the better it will be for our prosperity and freedom in the economic sphere—not only in the matter of production but also in the matter of trade, especially foreign trade, this industry is dominated by foreign interests. I have always held the view that so far as foreign trade at least is concerned, as a first measure it must be the Government's policy to take it over and run it on Government auspices. I do not know whether the time has come for us to take over the foreign trade of the tea industry and run it as a Government measure. It may be that the hon. Minister may bring forward the same old plea that we have not the necessary resources, both in money as well as man power. Well, my point is that so long as we are not in a position to control the foreign trade in tea, we will not be able to see that the industry prospers in a proper manner and the foreign element here is not taking further root in the country and it does not also exploit our resources.

I come from a constituency which has large tea estates. I have seen labourers working there and today their condition has a little improved. We all know that the industry developed and prospered at the sweat of these poor labourers. Many of those people who went to these tea gardens have either been broken down as a result of malaria and other diseases or they have been so much exploited that they returned broken down. Therefore, this industry really has developed on the blood and toil of the poor labourers of India, and if anybody has a right over the profits that this industry earns, I think it is the labourer who has devoted all his life in conditions which are most unenviable and unhealthy to develop this industry. The nation has a duty to protect these interests and I hope the hon. Minister will utilise the powers that the Government have taken under this Act to see that the labourer gets a fair deal.

Another matter I want to touch upon is about the small garden owners, about whom the previous speaker referred. The hon. Minister himself pointed out that only about 20 per cent. of our gardens are owned by Indian nationals. In the area from

[Shri Damodara Menon]

which I come, I have found that it is virtually impossible for Indian owners to develop the tea industry. There is a curious feature there. There are, of course, vast foreign-owned estates; they also own virgin lands which are not brought under tea cultivation. They keep these lands under their control; they have taken them more or less on lease from private owners Janmies in Malabar. They have taken them on long terms of lease—99 years and sometimes even more than that. They do not cultivate these lands. They are virgin cultivable lands which can be brought under cultivation, but they do not do that. And they do not like Indian owners also to cultivate them, because these are under their control. What Government can do to take these lands under their control and if necessary, when we are thinking in terms of expansion, to see that these lands are given to Indian planters so that they may cultivate them, is a matter that requires the careful consideration of the Government.

This industry has passed very recently through a period of strain and stress and the hon. Minister has shown that it is because of the thoughtlessness and also want of proper policy and management on the part of the tea estate owners themselves that this crisis has come over the industry. I hope after this measure has become law, the Government and also the Tea Board will see that such crises do not occur from time to time. In this matter also it is necessary that the tea industry is brought under stricter control and the Government enters the field not in the manner as is contemplated in this Bill but as a partner with full powers to see that the profits of the industry are utilised for the interests of the industry and also in the interests of the labourers who work there.

Shri Punnoose: If there is any philosophy with regard to this Bill it is that this Government is suffering from the poverty of philosophy, a correct philosophy.

Well, we hoped—and the people of India have a right to hope—that the Central Government will take a definite step by which they shall take charge of this big industry. It has been agreed—and considered by the hon. Minister himself—as to how strongly foreign elements—British capital—are entrenched in this industry. What we should expect in the national interest was that the Government of India should take charge of this.

I referred to philosophy not in the routine fashion, because the hon. Minister who introduced the Bill said: 'I do not want the British industrialist to be replaced by an Indian speculator. Perhaps he has only two alternatives—either the deep sea of the British interests or the devil of the Indian speculator. There is a third, healthy, effective and beneficial alternative; that is, that the people of India through their Government take charge of it. We have been consistently demanding that foreign capital which is having its stranglehold on our economy and also, to a certain extent on our political life, should be confiscated by the State and be nationalised. Perhaps, due to the philosophy of the Government, they are now satisfied with this very unsatisfactory legislation. But we also expected that by virtue of their position Government would develop and regulate this industry. It is not only a question of keeping the *status quo*. If Government really want something concrete and something beneficial to be done, then they should have plans and provisions to develop this industry and reorientate the whole thing. But nothing is in view and at the most what will happen is that at a date not far distant from this, you will find that the British elements who are entrenched in this industry will look upon this Bill as but a storm in a tea-cup. It will not affect them in any way substantially. We are not under any delusion at all.

Another point that I wanted to bring to the notice of the Government is that while working this Bill they have to take particular note of a certain phenomenon in this industry. The British industrialists who run the show get down large numbers of men from their country; even for posts and offices which can easily be managed by Indians, highly-salaried persons are brought down from Europe. You have got all sort of Europeans bossing over the Indians in this industry. Also in the matter of remuneration there is a lot of difference; you have had lots of complaints put forward by organised labour or employees that while the Indian employee has to retire in his old age with about 3,000 or 4,000 rupees, a similarly placed European will go away with Rs. 50,000 or 60,000. They have all sorts of allowances. It will be a slur on our supervision, however limited it might be, if you permit that condition to exist any longer.

With regard to the housing of the workers, I believe the Government will have to take particular care. I am surprised to find that in all the reports of the Enquiry Committees, they have been referring in this context to estates in my part of the country. I have gone to those estates; I have spent hours and days there. But, all these amenities that are being described or mapped out are not there in fact. Some sort of bogus arrangement is being shown to the Enquiry Committees, I think. Government should immediately undertake an enquiry into the conditions of labour, their housing conditions and other amenities.

Another point that I want to raise at this moment is about the medical facilities given to the employees and workers. If you make even a superficial survey of the medical facilities given in these different estates, the whole science of medicine will stand ridiculed. In several cases, people who have passed their school final or third form are doctors in many estates. They are playing with human lives. Some people say that the British capitalists have played their game well; they have played it at the cost of Indian lives, and blood. The Government of India have to make an enquiry into this and proper medical facilities should be given to the lakhs of our people in the estates.

Shri A. V. Thomas: As I said in the beginning, I welcome this Bill. But, my objection was to certain clauses in the Bill; and now, that all those clauses have been disposd of, the industry certainly may view with great concern some of the provisions of this Bill, which is about to be passed into law.

A law is not an end in itself and it must serve some purposes. In this case, the test is whether it promotes and builds up an efficient and prosperous industry. I hope it will. With such unlimited powers in the hands of the Government, the responsibility will now shift from the hands of the men who have been running this industry so far to that of the Government. With the power they have taken comes also the serious responsibility. I am sorry the hon. Minister of Commerce and Industry is not here. He would naturally be very happy that he has piloted this Bill successfully through this House. For another reason also I am sorry that he is not here, because, some of the very reasonable amendments which have been put before this House, I feel, would have been accepted by him, were he here. I do not blame the Minister of Commerce. He was very honest and frank. For that purpose I am very sorry that my hon. friend is not here today but I think he is doing very good work elsewhere.

Hereafter, as I said, the Government is taking over the responsibility and I hope the Government will not blame the industry for anything that might happen. They have come in, they have taken the powers and they are going to fix the maximum and minimum prices and in case the minimum price is not accepted, they may even go and purchase all the stocks of tea. That is what I understood the hon. Minister to say. Well, that is a very great responsibility to take up for a big industry which has been described as the second great industry here.

Something was talked about 80 per cent. business. The 80 per cent. is there and what is the remedy? How does it affect, I ask in all fairness, the interests of the Indian owners? Does it in any way retard the progress of the Indian owners? Had we been careful, we would have, by this time, taken over the 80 per cent. and become 100 per cent. owners. Nobody should have been more happy than myself if today we were in the fortunate position of owning the whole industry ourselves. The 80 per cent. still remains. That is a matter of policy; that is for the Government to look into. Well, I hope that anything which is done will be done with equity and justice.

Reference was made to the high profits earned and that the money has ben frittered away. I am not going to take up much time but there is a report of the Cachar Plantation Committee and in that report it is said that from 1929 to 1949, for 20 years, the average return that was paid to the investors works out at 2.13 per cent . I hope that hon. Members will agree that it is not a very handsome return. It is much lower than what the Government bonds bring in.

Reference was also made to the high expenditure, the high salaries and allowances etc. that are being paid to the men in these estates who are looking after the interests of the planters. Comparisons are not very happy sometimes. The allowances of the Members of Parliament here come to a thousand and odd rupees. I do not think any Member pays his servant a high salary. In every stage of life, there is a difference in wages. I get Rs. 1,200 and I spend it on myself as most other Members do. Any comparison in that respect, I do not think, is correct.

[Shri A. V. Thomas]

A lot was talked about labour. We feel that there is improvement to be made in the case of labour, in accommodation, medical facilities and in other ways. But permit me to say that the facilities that are there, the medical facilities and the housing facilities are much better than the normal facilities obtainable for the same type of labour in the urban areas or anywhere else. Hon. Members said that we are in the primitive stages or something like that. We live in a primitive stage because we live in forests, we live near the industry. But our labour is, as far as possible, given fairly reasonable cottages and if anybody would like to come and see some of our estates, I would invite them and I would take them round and satisfy them. Anyway the conditions are not so bad as have been painted here. The plantation owner has been painted as a monster; he is not a monster, he is a human being and like you. This is what is being done and if the industry pays its way, certainly much more will be done. We have got into difficulties not for any of the reasons stated in the Bill but because there has been a slump in the world market. Now the Government has come to the aid, naturally we look, as an industry, to them; at the same time, as far as co-operation is concerned, we would ungrudgingly give it. It is our bounden duty in the interests of the nation to place all our resources and energy at its disposal and I say, with all the emphasis that I could command, that it is at the disposal of our country. We might fight with the Government, we might put forward our grievances and we naturally expect Government to look into the matter in a dispassionate way and hear both sides of the question.

In the past there had been a difficulty; that is, when the Government made up their minds in any case, they did not consult the industry and because they did not consult the industry they fell into pits because they did not know of their existence. Those could have been easily avoided. I do not want to go into details. Today we had a lot of discussion about the question of consultation. In a way the Bill has been amended and I welcome the Bill. I assure again that every kind of cooperation from the side of the industry will be at the disposal of the Government.

Shri S. C. Samanta: Government have taken full control of the industry in its hands, and full responsibility also. One thing I would refer to is this. On the 21st April 1947, Mr. Chundrigar, the then Commerce Minister said in a conference that the tea auction business should be transferred from London to Calcutta, because we are much interested in foreign exchange and this foreign exchange is being hampered by the auction being held in London. The Government tried to construct warehouses in Calcutta, but up till now the accommodation is not sufficient. I think when the Government has taken the whole control now, it is time for Government to see that there is full accommodation for keeping in store the tea produced in India in Calcutta so the full benefit of the foreign exchange will be available to the Government and also to the public at large in India. This point I press on the attention of Government; or else the industry will go to ruin.

Shri Karmarkar: I will be brief because the ground covered by the various speakers this morning at this last stage of the Bill has already been sufficiently dealt with by my esteemed colleague the Minister of Commerce and Industry. My esteemed friend Mr. Harihar Nath Shastri complained that we have not gone as far as he might ask us to go or he might have thought we should go. We have taken power to take over big industries or units of this nature, and we have to balance various considerations. We have been carefully watching the developments in this sector. We have thought that the time is opportune for taking over greater control of this industry.

There was an attempt on behalf of certain of our friends opposite to curtail the discretion of Government in the powers that they have deemed fit to take under this Bill. What we have really done is this, that we have really enlarged the sphere of effective control by this House itself in bodies which are autonomous. In seeking to have greater control over this industry, what we have done is we have taken that control not only on our own behalf but on behalf of this House. Parliament will now have greater chances and greater opportunities to effectively guide the destinies of this industry than it was able to do before; because the Tea Board was largely responsible for its own affairs to a greater degree than it would be now. So, I think that we have proceeded far enough. It is no use trying to run before we can walk. This industry raises many difficulties. There is no consideration of what we might or might not have done in the face of difficulties over which we have no control absolutely. Ultimately, tea is a product which is largely to sell in the foreign market and the vicissitudes of the foreign market had had their desirable and undesirable repercussions on tea demands here. In the industry, if there had been a sort of boom for a long time, last year, as my esteemed colleague made it clear earlier, it suffered a depression. I think the powers that Government have taken for control in this Bill are sufficient for the time being. And, if it becomes opportune at any time to take greater powers or if the time comes for taking over the industry itself, Government will not hesitate to come before this House. But I think it will be a very long time. If hon. Members have followed the Prime Minister's statement with regard to nationalisation—which is quite clear and unambiguous on this point—they will know what things we consider to be essential and what industries we want to nationalise, what industries we want to control. At the present moment, this is an industry which should be controlled. We should not go far as to nationalise this industry.

Then, another esteemed colleague of ours said he had some useful suggestions to make which are very salutary. Government should do something to build up research. There may be no difference of opinion about it. Government should study all aspects of the industry. It is true and there can be no difference of opinion on that point.

Then, about labour. My esteemed friend is correct. It is absolutely clear that Government do not wish to do anything detrimental to the interests of labour. There was an attempt to "smuggle" in—it may be unparliamentary to put it in that vein—to have some provisions for labour welfare put into this Bill. The proper method of dealing with labour welfare will be to have them in labour laws and not in this Bill which concerns itself with the development of the tea industry.

My friend over there was almost philosophical; introduced philosophy in tea thus just putting in some bright patches. In fact one of the interesting features of this Bill is the increased delight that has been taken by friends who are taking more coffee than tea. In any case, it means good luck for tea.

This big industry which has been a pride to the nation from that point of view, it becomes naturally the duty of Government as well as the duty of every one concerned, in the interests of the country, to take as good care of this useful national industry as is possible.

My friend Mr. Damodara Menon was disappointed. He harped back on the old theme that while politically this country is free it is still in economic bondage. He referred to the foreign interests that are still operating in this country in this industry. Of course, he envisages the possibility where the national Government, as soon as it came into power, by one stroke of the pen, with the backing of this House, could pass a law that all foreign interests should hereafter be abolished. If it were practicable, well, that could have been considered. It was the foreigners that developed this industry. If the industry passes into Indian hands, if the ownership of the industry passes into Indian hands, we shall be happy. Ultimately, we should look at this question from all points of view. We should not do anything to prejudice the cause of our ultimate national interests.

My hon. friend, Mr. Thomas was disappointed that the Minister of Commerce and Industry was not here. I also rightly share his disappointment, though not for the reason that his amendments would have had better response at out hand, but, then, because I myself would have been saved the trouble of being at this Bill this morning. For this reason, I really share his disappointment and I am quite sure that my hon. colleague would have been very happy to know the consensus of support that this measure has received all along ever since he took charge. It has been one of his anxieties to see that all these plantation industries are placed on a proper footing. This Bill, just like similar Bills in respect of other plantations, shows the anxiety with which my esteemed colleague, the Minister of Commerce and Industry, has been pursuing this matter.

I have nothing more to say. All is well that ends well, and we are very happy to see that even those who have not been satisfied as also those who have been disappointed have been unanimous in expressing one feeling, viz. that we are all agreed in looking upon this industry as a huge and rich national asset and all are anxious to see that this industry is developed, not in a lopsided manner, but in a

[Shri Karmarkar]

manner that is beneficial to the growers, the consumers, labour and every other party affected. I appreciate the thorough support which has been given to this Bill.

Mr. Chairman: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

VINDHYA PRADESH LEGISLATIVE ASSEMBLY (PREVENTION OF DISQUALIFICATION) BILL

Shri Punnoose (Alleppey): I would like to make a submission before the hon. Minister moves the Bill.

Mr. Chairman: How can he do so before the Bill is moved?

Shri Punnoose: I have a point of order.

Mr. Chairman: What is the point of order?

Shri Punnoose: This Bill was included in the list that was placed before the Business Advisory Committee. When it met last, the Committee set apart time for only some important Bills and with regard to a few other minor Bills they were expected to be moved as and when time permitted. With regard to this particular Bill, strong opposition was raised by many Members of the Business Advisory Committee and we were given to understand—although not in a very formal way—that it may not be moved at all. The Whip of the Congress Party who was present at the meeting told us that he would think about it. Now, having once brought it up before the Business Advisory Committee I believe it was only fair that the Committee should have been consulted once again before bringing the Bill before the House.

Mr. Chairman: From what the hon. Member has said, I understand that there was no specific agreement that the Bill would not be taken up.

Shri Punnoose: There was no specific agreement.

Mr. Chairman: In the absence of an agreement, I do not know on what the hon. Member relies for his contention that this Bill should not be proceeded with.

Shri H. N. Mukerjee: (Calcutta North-East): On a point of clarification, Sir. I happened to be present at the meeting of the Business Advisory Committee. What happened was that, we decided to take up certain major Bills, whose importance the Government emphasized, and we allotted certain days for the discussion of those Bills. Government said that, to prevent the House finding itself without any employment in case a particular Bill is discussed and the discussion is completed before time, we may have a few other minor Bills. As far as this Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill was concerned, we expressed our strong opposition to its being brought forward in this session, and the feeling of the Business Advisory Committee definitely was that this, being a major Bill with very major signification, should not be brought forward before the House.

Shri P. T. Chacko (Meenachil): I would like to say a word, because what happened in the Busines Advisory Committee has been misrepresented to a great extent. It is true that some of the Members of the Committee were against the introduction and the consideration of this Bill.

[MR. DEPUTY-SPEAKER *in the Chair*]

But I am sure that even at that time the hon. Minister of Parliamentary Affairs and the Government's spokesmen were expressing their strong opinion that this Bill should be taken up in this session itself.

Shri Punnoose: In that case, I have to make a further submission.

Mr. Deputy-Speaker: Before that, let me make the position clear. Of course, I was present in the Committee. I find from the Parliamentary Bulletin—Part II dated the 17th April 1953 the following mention:

> "The Committee were informed that Government considered that the following 15 Bills should be passed before the current session concluded...."

and the Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill featured as item No. 7 in the list that was given. What we did in the Committee was that we agreed upon a time-table for the discussion of the Bills that were referred to in the Bulletin, and for the Estate Duty Bill we had agreed to the allotment of five days. So far as this Bill was concerned, if it could be taken up, we felt, it could be taken up. We did not fix any particular time. No doubt, some hon. Members said in the Committee that no time could be fixed and if it was taken up, they would go on opposing it and even filibustering it. I attribute no motives. It is open to them to accept or not to accept or throw out the Bill. The point is that we did not fix any time-table for it. So, if we can get it through and find some time for it, there is nothing preventing the House from taking it up. All that we did not do was to fix up any time with respect to the other Bills than the ones for which definite allotment of time had been made. That does not mean that this Bill ought not to be brought forward today. We never understood that it ought not to be brought forward. There was only an expression of opinion on the part of some hon. Members who said that they were opposed to this Bill. By all means, it is open to them to oppose it and carry the House with themselves. That does not mean that we ought not to take up this Bill.

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Shri H. N. Mukerjee: I can recall to you that when this particular circular was sent to all Members of Parliament, objection was raised on the floor of the House by Members belonging to certain parties other than my own that the Advisory Committee had not agreed to take up these Bills as being ones likely to be considered in this session. On that occasion, on behalf of Government a statement was made that these other additional Bills, apart from the first five, were included only in order to have a safeguard against Parliament having nothing to do on its agenda in case the first five Bills were completed before time. Government gave a more or less implied assurance—if it was not a formal assurance—that no major Bill with any major signification would be brought forward. In the meeting of the Business Advisory Committee, the representatives of the different parties in the House including, of course, some Members of the Congress Party expressed their misgivings in regard to this particular Bill, particularly because of the very serious constitutional signification which attaches to it. Naturally, we expected that Government would not bring forward this Bill at the fag end of the session and try to rush it through, when it raises such serious repercussions.

The Prime Minister and Leader of the House (Shri Jawaharlal Nehru): May I say a few words, Sir? The hon. Member has referred to what I said on a previous occasion. I do not know what relevance that has, because this particular Bill was included in the essential ones. So, the non-essential ones which were added on do not make any difference. The hon. Member may have certain views about this Bill which may be at variance with ours. We know that this is a necessary Bill, an urgent Bill and an important Bill, about which the law is hundred per cent. clear. The hon. Member must study the law carefully, because it has to be approached from a legal point of view as much as it is approached from any other point of view. We think that the law is completely clear. We have gone into that with the greatest care, and I really do not see why, simply because some hon. Members have some misgivings about it, a large number of other hon. Members who have no misgivings should not proceed with this Bill.

Shri Punnoose: I think the hon. Prime Minister has not understood the position properly. We said that this Bill had been brought before the Business Advisory Committee and there was an understanding that this would not be pressed.

Shri P. T. Chacko: There was no such understanding.

Shri Punnoose: It was not said at that time that this was a necessary Bill or an urgent Bill and that it should be passed immediately. Further, since you, Sir, have tried to express the views that came up in the Committee, may I add that you were not there at that particular time and the hon. Speaker who was there expressed himself very strongly against this Bill being brought before the House. He said that it was improper.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): It is absolutely incorrect. No such thing was said.

Mr. Deputy-Speaker: No more arguments are necessary. The acting Leader of the Communist Party has already spoken, and I have allowed one other hon. Member also to express his objections. So far as this matter is concerned, the position is clear. In the Business Advisory Committee, Government expressed themselves as being anxious to see that this Bill was got through during this session. Unfortunately, hon. Members do not understand the scope of the Business Advisory Committee. They should bear that in mind. When a number of Bills have to be placed before the House, and when Government is interested or wants that some Bills

[Mr. Deputy-Speaker]

should be got through urgently, naturally we meet in the Advisory Committee so that, with the approval of the various Leaders of the different Groups, we may find out what exactly would be the time necessary for each Bill, lest there may be an impression that Government were trying to see a Bill through much earlier than warranted or were trying to rush it through. Therefore, we sit together in the Committee and if we find that the Government wants a set of Bills to be taken up, we try to allot time for the different Bills. Thereafter, with the consent of the House, the Chair decides that so much time will be allotted for the first reading, so much for the second reading and so much for the third reading, and so on.

It was never intended that so far as this Bill was concerned, it should be given up. As a matter of fact, in a subsequent Parliamentary Bulletin issued on the 2nd May 1953, this particular Bill was put down as item No. 8. So far as I am able to see, Government was anxious, in the Business Advisory Committee, to see that this Bill was got through, but some of the Members were opposed to it. Of course, on principle, they are entitled to oppose it, but at no time was it said that this Bill would not be taken up. If the Government wants, it is open to it to bring a Bill. If it is a question of the House being taken by surprise, or sufficient notice not being given, etc., that is another matter. But, otherwise, the Business Advisory Committee can only go so far as to say that with respect to a particular Bill they agree to so much time being spent. Even then, the House has to approve of it, and then the time-table is adhered to. It does not stand in the way of Government bringing forward any important Bill and saying, "we will push out all these and proceed with this". The Speaker will only take care to see that there is no element of surprise and that sufficient time is given for discussion. But so far as this matter is concerned it has been sufficiently long on the Order Paper. Hon. Members are at liberty to express their views, oppose and carry on discussion on that matter. I will allow this Bill to go on.

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

> "That the Bill to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh, be taken into consideration."

I am aware that this matter has given rise to some controversy.

Shri H. N. Mukerjee: May I rise on a point of order, even before this Bill is taken up? I submit that this Bill is out of order because, I submit, that in clause 4 this Bill refers to certain members of the Legislative Assembly of the State of Vindhya Pradesh who are mentioned in a Schedule attached to the Bill. As far as these people are concerned, these gentlemen mentioned in the Schedule, the President had issued a notification after reference to the Election Commission which determined that these people suffer under a disqualification of the membership of the Assembly concerned. After the President had issued this notification, the notification was read by the Speaker of the Vindhya Pradesh Legislative Assembly and the twelve members of the Assembly concerned ceased from that point of time at any rate to be members of the Vindhya Pradesh Legislative Assembly. The President's order was published on the 31st of March 1953. I have not got the date when the Presidential notification was announced by the Speaker in the Vindhya Pradesh Legislative Assembly, but that must have been a few days after the 31st of March 1953. My submission is that these persons are no longer members of the Legislative Assembly of the State, in the sense that it is quite beyond our jurisdiction to sort of whip up a dead being into life, so to speak, to make non-members of the Legislative Assembly members of the Assembly by a sort of retrospective legislation which is almost a record in constitutional history. I submit therefore that this Bill, referring as it does, to certain members of the Legislative Assembly of Vindhya Pradesh who do not exist as members of the State Assembly of Vindhya Pradesh, is out of order.

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West). You cannot revive the dead.

Dr. Katju: It is really not a point of order because it is the substance of the Bill itself. Clause 3 of the Bill says:

> "It is hereby declared that the offices of members of any District Advisory Council shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh".

Then in clause 4 it is set out: "For the removal of doubts"—inasmuch as twelve members had been declared to be disqualified because they had been members of the Advisory Council, therefore they were by name declared and they are now sought to be declared to be properly qualified members of the Vindhya Pradesh Legislative Assembly.

It is open to the House either to pass the Bill or not to pass the Bill, but it does not raise a point of order as to whether it is within the competence of the House. That is a point to be considered, but I submit no point arises for any declaration by the Deputy-Speaker as such or by the Speaker as such.

When I come to the merits and the House hears, if it so desires, the Attorney-General there will be abundant authority produced that we have followed precedents exactly in point where something has happened of a similar kind and it was thought that the best and the only formula and legal procedure was to provide in the manner in which we are going to do now. That is my answer.

It is not a question of order but of the substance of the Bill itself.

Shri K. K. Basu (Diamond Harbour): If you read clause (3) of article 101 along with article 102 it specifically says that "if a member of either House of Parliament becomes subject to any of the disqualifications mentioned in clause (1) of article 102" immediately he ceases to be a member and his seat becomes vacant. So the whole point is this. And once a seat becomes vacant there is only one method provided for filling it. The Constitution provides that that seat can only be filled up by election. So from the point of time when the President declared that they were disqualified, naturally the seats became vacant. How can we have legislation in this matter which violates the specific article of the Constitution? So we submit that we cannot discuss this Bill. I do not know why the Attorney-General has been brought.

Dr. Katju: May I answer that briefly? The Constitution as such does not apply to the Part C States—these particular articles. So far as Part C States are concerned it is the subject-matter of legislation, the Government of Part C States Act 1951 (Act 49 of 1951) and this matter is governed by sections 16 and 17 of that Act. Formerly, as the Act stood, it was left to the President to decide as to whether there was a disqualification or not if there was any dispute. But the President removed that difficulty or that doubt by promulgating an order under section 43 of the Act itself in which he said that the matter should be referred to the Election Commission, and the President would decide the matter on the advice of the Election Commission. The articles of the Constitution which my hon. friend read refer to Parliament and to the Legislatures in Part A States and Part B States. So far as Part C States are concerned they are entirely governed by this Act of Parliament, and it is open to Parliament, if it so chooses, to amend the Act or to do anything with it. Therefore, no question of any amendment of the Constitution arises here, nor are we by this Bill doing anything with the Constitution.

Shri Algu Rai Shastri: Is this Bill an amending Bill?

Shri Raghavachari (Penukonda): As regards the Act relating to Part C States, actually articles 102 and 103 of the Constitution have been made part of that Act. But in section 17 of the Act there is a phrase which is not to be found in articles 102 or 103 and it is this. Section 17 of the Act says:

> "A person shall be disqualified for being chosen as, or for being, a member of the Legislative Assembly of a State if he is for the time being disqualified......"

The phrase used there is "for the time being". That phrase is not to be found in the Constitution either in article 102 or in article 103. Article 102 which is added there is supplemented by this phrase "for the time being". Therefore, the disqualification must relate only for the time at which the disqualification was existent or was considered so. It is not open now to pass a legislation and say that that phrase was not there. Therefore, the Bill will be out of order.

Shri K. K. Basu: May I just submit one point, Sir?

Mr. Deputy-Speaker: I have heard enough.

Shri K. K. Basu: My point has not been answered.

Mr. Deputy-Speaker: I will answer that point. The point is this. Under article 102 of the Constitution, a person would be disqualified for being chosen as or for being a member of

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either House of Parliament. Assuming that all these three articles, 101, 102 and 103 have been made applicable to Part C States by the Order of the President, article 102 sets out the disqualifications for being chosen or being a member. Sub-clause (a) says:

> "If he holds any office of profit under the Government of India... other than an office declared by Parliament by law not to disqualify its holder;"

This is the law which seeks to declare that the office of being a member of the District Council shall not be a disqualification for continuing to be a member. If this law had been passed before the Order of the President had been made, they will continue without any hiatus to be members of that Legislature.

The only difference that is sought to be made is that this is coming after the President's Order is passed. Hon. Members are aware that a law of Parliament can be both retrospective and prospective. Therefore, there is nothing preventing this House from passing a legislation saying that this office shall never be deemed to have been an office of profit at any time.

We will assume for a moment that the President's Order is not there. Without the President's Order, this would really take you to that date and without any interregnum they would continue to be members. What is the effect of the President's Order? The President's Order will become a nullity in view of the fact that they are there from that time and continue to be fully qualified to continue as members. What follows is, on the basis that we are now acting, the Order becomes absolutely useless. Now, that provision is also made in clause 4.

Above all, hon. Members are aware this question goes to the very root of the matter. This is the soul of the Bill. As was stated by the hon. Home Minister, if exception is taken in a point of order to going on with the Bill, the very purpose of the Bill is defeated, In all these matters, the Speaker has never taken upon himself the responsibility of deciding this point of order whether it is constitutional or otherwise. It is for the House to take this also into consideration in voting down the Bill or accepting it.

Shri H. N. Mukerjee: May I point out one thing, Sir? It is an act of the President which we are trying to change by an Act of Parliament. I find in the Statement of Objects and Reasons, it is stated....

Mr. Deputy-Speaker: Order, order. I have already said that I am not going to give a ruling regarding the point of order. The accepted practice of this House is, the Speaker never takes the responsibility for deciding this kind of point of order that the House has no jurisdiction. It is the duty of the House, it is the responsibility of the House to decide it for itself. It is open to it. Under these circumstances, it is not necessary to go into this point of order. When the hon. the Leader of the House, the Leader of the Communist Party or any other Member gets an opportunity to speak, he may put forward his arguments so as to influence the opinion of the House for that particular purpose. Otherwise, the point of order need not be raised now.

Shri K. K. Basu: My point of order I want to be decided. I do not say that it applies to Part C States. What I submit is, on the admission of the Home Minister himself....

Mr. Deputy-Speaker: Whatever it is, I am not allowing any point of order regarding this matter.

Shri K. K. Basu: My only submission is that the point of order be decided before the House proceeds..

Mr. Deputy-Speaker: The hon. Member will have an opportunity to speak on this point. What I say is this. All hon. Members have something to contribute to the debate in the House. They will have an opportunity to speak on this matter.

Shri K. K. Basu: I want to submit that the Attorney-General is here. He may be asked to reply to my point.

Mr. Deputy-Speaker: That stage will come when it is necessary. If hon. Members come forward with their arguments, if possibly the help of the Attorney-General is necessary, it is for the Government to ask him to intervene in the matter.

Shri H. N. Mukerjee: The arguments regarding the tenability of this Bill..

Mr. Deputy-Speaker: I am not competent to decide. How many times am I to tell hon. Members not to raise this point? It is not competent for the Chair to decide such issues as to want of jurisdiction of the House. So far, they had not taken the responsibility.

I am not prepared to take that responsibility. It is in accordance with the precedents. Such an important matter as this, I leave it to the House to decide. *Prima facie* I come to the conclusion that there is nothing so far as the point of order is concerned. This is quite constitutional.

Shri H. N. Mukerjee: Would you not call upon the Attorney-General to say about the tenability of the Bill?

Mr. Deputy-Speaker: Not now.

Shri H. N. Mukerjee: That would save the time of the House.

Mr. Deputy-Speaker: I am satisfied; it is not necessary. If there are sufficently strong arguments here, if the Government feels that those arguments have to be refuted, possibly, they may request the Attorney-General to speak. Now, I do not feel it necessary at all to call upon the Attorney-General at present.

Shri Nambiar (Mayuram): It may be put to the House.

Mr. Deputy-Speaker: I will not put it to the House at present. I know the stage.

Shri Punnoose: Just now, you were good enough to state that it will be decided by the House.

Shri N. C. Chatterjee (Hooghly): We have got other points attacking the constitutionality of this measure. We are certain—I will not be so dogmatic as the Leader of the House to say 100 per cent. certain—that the Bill is unconstitutional and infringes the mandatory provisions of our Constitution. It will be better if we formulate our objections after the Home Minister has spoken and then the Attorney-General can deal with them and then we can deal with the matter as a whole.

Mr. Deputy-Speaker: Oh, yes. Hon. Members are aware that there is a consideration stage. If the consideration stage is passed, we will go clause by clause. Then, there is the third reading. The hon. Home Minister will start. Then, I will put the matter before the House. Then a discussion will ensue. At a particular stage the Attorney-General may intervene if the Government so chooses.

Dr. Katju: Let me give the House very briefly the very short history of what has actually happened. On the 26th of April 1952, the Vindhya Pradesh Government, in the interests of public administration, passed an order whereby they constituted District Advisory Councils for each of the eight districts in Vindhya Pradesh. This Council was to consist of the local officials of various departments including the district officer and the members of the Legislative Assembly representing the district. Irrespective of the particular party to which they may belong, the order said that all the members of the district shall be members of the District Advisory Council. There were to be five other non-official members, nominated by the Lieut.-Governor. The function of the District Council, broadly speaking, was to review the activities of the previous month. The Advisory Council was to meet every month and so they were to review the activities of the previous month and make recommendations on matters affecting the district on general questions. The function was purely advisory and they were not entrusted with any executive functions. So far as the official members were concerned, they were to get their usual allowances. So far as non-official members were concerned, the provision was that they were to get their travelling allowance and also the allowance applicable to members of the Legislative Assembly for the day or days of the meetings.

When this Council began to meet, many members attended; many members did not attend. What happened was, there were five Ministers and one Speaker. They never attended and they did not probably think that they were members of the Council. Three members of the Legislative Assembly formally refused membership. Eight members neither accepted nor refused; nor did they attend any meeting at all. Fifteen members attended, and drew their travelling allowance and halting allowance. Twenty seven gentlemen did not do so. The House is aware that the rate of halting allowance was rupees five a day.

On the 30th of October, 1952, a representation was received by the President here from a member of the Vindhya Pradesh Assembly saying that the membership of the Councils as constituted by the Vindhya Pradesh Government constituted an office of profit, and therefore, it had disqualified all the members, because the executive order had made no distinction between one member and another member. They said it had disqualified all the members. When this representation came, then, as Vindhya Pradesh was a Part C State, we consulted the Act and we found that the

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matter was left to the discretion of the President inasmuch as this was a sort of semi-judicial matter relating to elections. We thought that the provisions of the Constitution in relation to Parliament and in relation to Parts A and B States constituted a good precedent, and therefore, the President promulgated an Order saying that as part of the Government of Part C States Act, all questions arising and relating to the disqualification of any particular member shall be decided by him, but that it shall be decided after the matter had been referred to the Election Commission and the President shall abide by the advice of the Election Commission. That is the substance of article 103 of the Constitution and article 102 of the Constitution. I only repeat and emphasize this aspect because a good deal has been said in the discussions, *viz.*, we are flouting the order of the President and it constitutes a reflection on the President. There is nothing of the kind. The President's order itself and the very language of the Constitution says that he shall abide by the advice of the Election Commission. Whether the Election Commission is right or wrong is a matter of opinion.

The President's order was promulgated on the 14th of January, 1953 and that became a part of the Government of Part C States Act. Thereupon the President formally referred the matter to the Election Commission and the Election Commission by their report dated the 2nd March, 1953 advised that 12 of the members had become disqualified. I am not sitting here in judgment on the pronouncement of the Election Commission, but the way in which the Election Commissioner proceeded is this. He said it is a general order; it is an office because the executive Government has promulgated or made these appointments. And he said it is an office under the executive Government because it is open to the Government to revoke that order, and the result would be that all the members will cease to be members of the Executive Council. Now comes the question: is it an office of profit? He said: "Well, it is a very small, trivial sum". A member would go to the District headquarters from the mofussil. He would have to incur some travelling expense. Therefore, no question of profit arises there. Then, if he halts for the day in the District headquarters, he will have to incur some expense. That is only rupees five and therefore he exonerated every single member of the Vindhya Pradesh Assembly who was not a resident of the District headquarters where the District Advisory Council was bound to meet. Then there were 12 Members who were residents of the District headquarters. And as to them, of course, they never charged any travelling allowance, but they did charge rupees five and it was said: "Well, for going to the place of the meeting, they will have to incur some conveyance charges, this thing and that thing" but the Election Commission said there was some element of profit there. From rupees five it may be five annas or one rupee or two rupees, and therefore, he said that the Act should be enforced, and he expressed the opinion that what he called "the resident members" were holding an office of profit and they should be disqualified.

This was, as I said, received here on the 2nd of March. The Government had then to consider as to what was the position. The Vindhya Pradesh Government represented that they had acted in perfect good faith, that the members of the Legislature had acted in good faith; as a matter of fact, before they passed the order, they had taken legal opinion, and they had been advised that there was no question of any office of profit arising under these circumstances. And they said it would be a great slur upon these members and it would cause great disruption in the whole, what I may call, the political life of the Assembly and something ought to be done. Thereupon we took legal advice. I am emphasizing this because we took legal advice and from the highest source available to us. And please remember that the Attorney-General is not a member of the Government. He is the legal adviser to the Government of India, whichever the Government of India may be and he gave the opinion that it is a purely, what shall I say, trivial matter. He did not sit in judgment upon the opinion of the Election Commission. He said: "Whatever has been done has been done in good faith." There are previous precedents in the House of Commons in exactly similar circumstances where the House of Commons has intervened and especially by name passed a law whereby the Parliament there has declared that the member concerned was not disqualified, had never been disqualified, and it passed that with retrospective effect.

Then arose the question as to when Government should intervene here, and when should this Parliament be asked to legislate. That was also a question considered, and the legal opinion that was given to us was that under the law as it stood, the President—because, under the rules and under the Part C States Act ,he was bound by the advice—should first formally promulgate his Order saying that in accordance with the advice received by him, the members concerned had become disqualified. That formal declaration having been made, Parliament should intervene and pass the necessary legislation, and it is therefore, in strict accordance with legal opinion given to us that we have done so. Otherwise, I should like to make it quite clear we would have introduced this Bill earlier, because some people have said: "You might have brought this Bill before the President promulgated his Order accepting the Election Commission's opinion. Once the President having done so, your hands are tied." The legal opinion was—and I submit with whatever credit I may have as a lawyer—and the proper constitutional position was that the President was bound to abide by the advice. There was a dispute referred to him. He settles it first of all. The deck is cleared. Eeverybody knows how the matter stands, and then Parliament comes in and declares: "Well, here is this mistake", and says to all sections: "You declare your opinion that the membership of the District Advisory Council should never be considered to be an office of profit at all, or should never be considered sufficient to disqualify anybody today .or from any time."

I emphasize that because one of the amendments says that the Act should come into operation from such date as the Central Government may declare, which means that it should be prospective and it should not be retrospective. The very object of the Bill is to meet this mischief, *viz.*, something has happened which nobody anticipated, not a single soul anticipated. It is not a question of one member doing this or another member doing that. The Vindhya Pradesh Government thought that in order to carry on their administration in a democratic manner, they would rather have the advice of all the members of the Legislative Assembly elected from a district available to the district authorities. And they having done so in perfect good faith believing that there was nothing wrong in proceeding in that manner. I think Parliament owes a duty to all those members who have acted in good faith. They have not made any money out of it. They have not exercised any power. As I said, there is no question of executive function. It was a purely advisory function, and the Election Commission having drawn that distinction betwen resident members and non-resident members, we thought it was fair that we should do something in order to remove the disqualification.

To make it prospective will really be not to meet the mischief at all. That is the real history of the Bill and I have told you what the legal opinion we have received is. I have requested the Attorney-General to be present here and if any hon. Member wants, or if the House wants it, he would tell us as to what the legal aspect of the matter is.

I repeat once again that we are not considering any broad question under the Constitution. So far as the Part C States are concerned, the only piece of legislation binding on them or governing them is this Act which was passed in 1951. Any article of the Constitution which may be, you may say, brought into the thing or which may be considered a part and parcel of the Act—that is all done by virtue of the Act of Parliament. And therefore, it is open to Parliament to modify, amend or alter the Act of 1951 in any manner it likes. If such a question were to arise now in any Part A State or Part B State, then, with all respect to you, Sir, the argument that you have been pleased to put forward and the interpretation that you have been pleased to put upon article 102, read with article 101 of the Constitution, would have very great force, would be applicable and Parliament would have certain authority to intervene in a matter of this description. Because article 102 definitely says: 'other than an office declared by Parliament by law not to disqualify'. I say this because it may be that in other States, the State Governments acting, again, in complete good faith, may have appointed such Advisory Councils and may have requested members to come and serve at great inconvenience to themselves and by some flaw or wrong interpretation, there may be a great danger of the political economy of the State, so to say, being upset.

Mr. Deputy-Speaker: There is a small doubt. So far as the Vindhya Pradesh members are concerned, they are governed by the Government of Part C States Act, 1951. There is section 17 relating to disqualification of membership. It says, that the disqualifications shall apply to a person being a member of either House of Parliament under article 102. But there is article 103. If a doubt arises who ought to decide? There is no provision in this Bill.

Dr. Katju: That is what I said. Probably I did not make myself clear. In order to provide for that, under section 43 of the Part C States Act, if you will be pleased to refer to....

Mr. Deputy-Speaker: The President may remove any difficulty.

Dr. Katju: And thereupon the President, on the 14th January promulgated this order:

"Whereas a difficulty has arisen in giving effect to the provisions of clause (a) of sub-section (2) of section 16 and section 17 of the Government of Part C States Act, now, therefore, in exercise of the powers given by section 43, the President is pleased to make the following order."

And then he reproduces practically article 103 of the Constitution, namely, if any question arises as to whether a member of the Legislative Assembly has incurred a disqualification, the matter shall be referred for the decision of the President, and on any such question the President shall obtain the opinion of the Election Commission and shall act accordingly. Therefore, it is by virtue of this Order made under section 43 that the President has acted. I suggest, therefore, that it is entirely within the competence of Parliament to make any amendment or alteration and pass this Bill.

Mr. Deputy-Speaker: Can there not be a view that the Order of the President under section 43 is itself not valid in which case there is no disqualification at all?

Dr. Katju: Maybe. That may also be.

Mr. Deputy-Speaker: Removal of difficulties is only in the working, not creating an agency to decide as to whether these people have got a disqualification or not.

Dr. Katju: That may be another matter.

Mr. Deputy-Speaker: We will ignore the President's Order as being not valid. Therefore, there is no disqualification either so far as these gentlemen are concerned.

Dr. Katju: There is no disqualification now.

Shri Nambiar: Then why take the Bill?

Dr. Katju: I would welcome the stand of my hon. friend from the Opposition because it will then....

Mr. Deputy-Speaker: Let there be no cross talk.

Shri Nambiar: Then you withdraw it.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh, be taken into consideration."

Shri N. C. Chatterjee: The first point that I want to raise is: whose disqualification is sought to be removed? The persons concerned are no longer members of the Vindhya Pradesh State Assembly and therefore, really there is no disqualification now existing. You cannot remove something which does not exist. What is the purpose of this Bill?

Under the Government of Part C States Act, there are provisions in section 16 and section 17 which correspond to article 101 and article 102 of the Constitution. My hon. friend, Dr. Katju, was saying that it was a very trivial matter, and he tried to oversimplify it. But we maintain that this is an unprecedented thing which ought not to be tolerated by this House. It is an unconstitutional encroachment as it is going to overrule the President's final decision and it should not be tolerated in any shape or form.

Under article 101, if a member of the House becomes subject to any of the disqualifications mentioned in clause (1) of article 102, his seat shall thereupon become vacant. Then if you turn to article 102, a person shall be disqualified for being chosen as and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State. The question was raised by one of the prominent members of the Vindhya Pradesh State Assembly, I think by Shri Narbada Prasad Singh, so far back as October last year, and it was kept pending for months. He raised the point whether the acceptance of this office of profit automatically incurred the disability specified in the Constitution. Under the Constitution the member becomes automatically disqualified on his holding an office of profit. A person shall be disqualified for being chosen and for being a member if he holds any office of profit. There is no question that if it is an office of profit, then surely, automatically, he became disqualified; he could not sit any longer. They ceased to be members—all those gentlemen who held these offices of profit.

There was one lacuna in the Act. There was no provision like article 103—our article 103 of the Constitution—which says:

> "If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final".

And clause (2) of that article says:

> "Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion".

The sum total is this. There was no machinery provided for deciding the question. That was the lacuna, and the President was approached that this lacuna should be filled up. And he did fill it up. He issued an Order, of course, after a lapse of months, he did issue an Order which really incorporated article 103 in the Vindhya Pradesh State Constitution. Therefore, the net effect is this that article 103 became fully operative.

Now there is the question raised as to whether these members who held or accepted this office of membership of the District Advisory Committee or Council had become subject to the disqualification mentioned in clause (1) of article 102. The President said that he would decide and that his decision shall be final. But the constitutional safeguard imposed by clause (2) of article 103 was very rightly accepted by the President. He said: here is an Election Commissioner with an independent authority; you have placed him in charge of the conduct of elections throughout India; you have vested him with high authority and prerogative. His powers and functions are on a par with a Judge of the Supreme Court and he has discharged his duties well according to the Government. Therefore, he decided to consult the Election Commission. In effect a tribunal was constituted. The Election Commissioner was the tribunal to decide this point. The Election Commissioner went down to Vindhya Pradesh. He went to Rewa on the 23rd February 1953 and held a sitting. He heard the parties; he heard their arguments and then he gave his opinion definitely to the President that these twelve members who are residents of the headquarters of the district had become subject to disqualification as a result of holding offices of profit under the Vindhya Pradesh Government. The President considered the matter, he accepted the advice of the Election Commissioner and issued an order accordingly disqualifying the twelve members from being members of the Vindhya Pradesh Legislative Assembly.

As one of my hon. friends has already stated, the Speaker of the State Assembly communicated this order on the 2nd April 1953 to the members of the State Assembly on the floor of the Assembly and the twelve members accepted the position and withdrew from that Assembly. They recognised that the President's order was final and that they had ceased to be members of the Assembly.

This is not a "trivial" matter at all; it is oversimplifying the issue. You are putting democracy in peril. You are making our Constitution a laughing-stock if you behave in this way. You are doing this because they belong to the Congress party, that is, the majority party. Would you have done this, would you have vetoed the President's Order, would you have superseded the finality of the Election Commission's decision, as ratified by the President, if these members did not belong to your party, the ruling party?

The Election Commission's report is quite clear. According to that the Election Commission says it is not a trivial matter. I regret that Dr. Katju is trying to over-simplify it in his characteristic style. What does the Election Commission say? The Election Commission says:

> "It would be more reasonable, more desirable that we should concentrate upon the underlying principles and the real intention of the Constitution in incorporating those salutary provisions against the acceptance of certain offices by members of legislature."

What is the principle? If you once allow the executive of the day, or the Government of the day to throw crumbs, and to tempt the M.L.A.'s with small emoluments, some office, some remuneration, some D.A., T.A., anything you may call it, you may sugar-coat it in any way you like, you

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will be putting responsible Government in peril. Are you not making today a mockery of democracy? Are you not really trying to affect the independence of thought of the members concerned That is what the Election Commission points out. Here is a man who had been himself a judge of some experience and of some reputation, who had been conducting the elections throughout India, the biggest elections ever held, the most gigantic elections which have taken place. What does the Election Commission say:

> "It was felt obviously that the Executive Government of the Union, or of a State, should be discouraged from holding out blandishments to members of the legislature so that the latter would be free to carry out their duties to their electorate uninfluenced by any considerations of personal loss or gain."

That is the principle for which we are fighting; that is the principle on which the Constitution is framed, and that is the principle which is going to be superseded in a cavalier spirit by this kind of Bill. It ought not to be tolerated.

The Election Commission goes on:

> "If the Executive Government have untrammelled powers of offering legislators any appointments, positions or offices, however they may be described, which carry emoluments of some kind or other with them, there would be a clear risk that an individual member might feel himself beholden to the Executive Government and thus lose his independence of thought and action in his capacity as a member of the legislature and a true representative of his constituents."

I say we will be putting democracy in peril if this House accepts this Bill. I am using the language of the Commission again:

> "That will be a very great danger to the proper development of democratic institutions and the democratic way of Government in the country."

My second objection is this. After the vacation of the seats in the State assembly by these members under section 16 of the Part C States Act by virtue of the Presidential Order, these seats in the State Legislature can only be filled up by by-election under section 150 of the Representation of the People Act, 1951. It is not within the jurisdiction of anybody else; it is only within the jurisdiction of the Election Commission to arrange for the filling up of these vacancies so caused and it would not be right and proper to trespass upon this jurisdiction and to say: "No, this Parliament will set an evil example today. No more elections; no longer the people's will will matter; by legislation we will create M.L.A.'s in the State Assembly." (*An Hon. Member*: Nomination). Yes, parliamentary nomination, because you have got a majority.

My third point is this. Article 324 of the Constitution of India places the conduct of all elections to Parliament and to the Legislature of every State and the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with such elections to the Election Commission. This Bill infringes that article. It takes away the jurisdiction from the hands of the Election Commission and arrogates the power to say: "We declare that these people who have ceased to be members of the Assembly shall be declared M.L.A.'s again and they shall go on merrily." This is a kind of resurrection of dead people which should not be tolerated by this House.

My next point is that under section 17 of the Part C States Act, read with article 103 of the Constitution of India the Order of the President disqualifying these twelve members has become final. The power of the President is expressly vested in him. It cannot be transferred by Parliament to anybody else nor can it be taken away. You cannot arrogate that power to yourself. You have given him this power. That part of the Constitution is the integral part of the organic law that is binding on this Parliament and if you do something to supersede that finality you are really doing something against the Constitution. You are infringing that organic law and trespassing upon that organic law. You are acting both against the spirit and the letter of the law. Parliament cannot pass any Bill which qualifies or supersedes or affects the President's Order. This is an important and fundamental point. Once you allow that to be done, you will open the flood-gates to all kinds of nepotism and jobbery. Tomorrow a member may be unseated by an Election Tribunal, maybe for grounds which appear to the executive or to my hon. friend Dr. Katju as "trivial". Is it suggested that on the ground that because the Tribunal has unseated him on grounds which to the Government appear to be trivial, or which in the opinion of the Attorney-General is not reasonable, Parliament will pass an Act with retrospective effect restoring his membership? I am not laying stress so much on the retrospective aspect of it. I am stressing the fundamental point that you are trespassing upon the cardinal principles of organic law, the fundamental principles of our Constitution which should not be done. So long as you have sworn your allegiance to the Constitution and so long as the Constitution stands as it is, that is the paramount law and you cannot pass this Bill which is to some extent going against the President's Order—unless you amend the Constitution. Here, you are trampling the President's Order under your feet. What is the good of saying 'No'? Can you deliberately ignore what article 103 says in the case of a Member of the House of the People? It is solemnly stated in article 103 that the question shall be referred to the decision of the President. It clearly says:

> "If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final."

Unless and until you alter this provision, you cannot possibly say, "I will not pay attention to the finality of his decision". Finality means that his decision is sacrosanct. You cannot, tomorrow, say that he has done something which he ought not to have done. You have set up the tribunal. You have created the machinery or tribunal for judging the question. That machinery or tribunal has judged. It has acted according to the principles of natural justice. It has given a hearing. It has gone down to the particular State and heard the parties. It has heard the counsel's arguments and has then delivered a judgment. Here is a correct judgment, given in the conscientious discharge of judicial duties, with the fullest appreciation of the gravity of the situation. It points out that it is not a "trivial" matter, but you wrongly treat it as a trivial matter and then say that they should not have decided in that fashion. Are you not going to declare solemnly today, if you pass this Bill into an Act, that the President has done something which was wrong, that he has done something which was improper, that he has accepted a decision which was a wrong decision, an improper decision, an illegal decision?

Therefore, I say that this is an absurd Bill. It is a mischievous Bill. It is an unconstitutional Bill. It should not be pressed. It is an unprecedented procedure in the history of the Constitution of any country. It means really a censure on the conduct of our President. You are really trying to doubt the propriety, the integrity, of his conduct and saying that he ought not to have done this. These are very strong and cogent reasons which should make this Parliament not pass this law, or else, you will have to impeach the President according to the constitutional procedure prescribed. If you cannot do it, if you do not venture to do it, then do not think of passing this Bill. The powers of Parliament have been defined by article 245. You cannot go beyond those powers. You cannot, by a legislation of this type, substitute M.L.As. by law-making instead of M.L.As. by election a[illegible] substitute the free choice of the electorate by your choice as the ruling party for the time being in power. These are the points I want to urge and I say that this Bill ought not to be pressed.

श्री अलगू राय शास्त्री : उपाध्यक्ष महोदय, मैं आप से यह अनुरोध करूंगा कि इस से पहले कि कुछ और बहस हो, एंटार्नी जनरल साहब का भाषण होना चाहिये।

The Attorney-General (Shri M. C. Setalvad): I am concerned with only two aspects of the matter. The two aspects of the matter are, first, is the proposed legislation unconstitutional? Then I take a further step; assuming for a moment, as I hope to convince you that it is not, is it any breach of constitutional propriety to introduce this legislation? In my view, it is neither unconstitutional nor is there any breach of propriety so far as the Constitution is concerned.

It appears to me that the whole basis of what has been put before you by the hon. Member who preceded me is this that this is really action which is being taken under the Constitution. Now, that basis is, in my opinion, fallacious. It overlooks the fundamental fact that, when this disqualification was incurred or when the Presidential Order was issued or when the procedure of the Election Commission was gone through and finally the Presidential decision was announced, these acts were not done in pursuance of any provision of the Constitution. All this was done in virtue

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of the provisions of the Part C States Act, which is not the Constitution, but is merely a piece of parliamentary legislation which Parliament has, as in the case of any other piece of legislation, perfect jurisdiction to alter or amend, either prospectively or retrospectively. That appears to me to be the fundamental thing to remember in approaching the validity and the propriety of the proposed legislation.

1 P.M.

Hon. Members will remember that under article 240 Parliament has the power to legislate in respect of Part C States. Under that article it enacted the Part C States Act. The Legislative Assemblies were constituted; the procedure for election was provided; the disqualifications were created and the resulting unseating of the members was provided for, wholly by force of the legislation which was enacted under article 240. Attention has to be drawn to sub-clause (2) of that article which provides as follows:

> "Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution."

I want to emphasise, what I have already pointed out, that what is contained in Part C States Act is pure and simple Parliamentary legislation like any other legislation by Parliament. If one remembers that, things become very plain. Whatever you do—and I am not concerned with the question whether the proposed legislation is or is not justified—whatever you do to affect anything that has been done under the Part C States Act, has nothing to do with the Constitution. You are not touching the Constitution. One has further to remember the way in which article 102 has been brought into the Act so far as disqualification is concerned. If I may draw attention to the actual provision which has been made in section 17, all that it states is:

> "A person shall be disqualified for being chosen as and for being a member of the Assembly of a State if he is for the time being disqualified for being chosen as or for being a member of the Houses of Parliament under any of the provisions of article 102."

That means that if the member has certain attributes or certain disabilities mentioned in article 102, he will be disqualified by reason of this section. Let us not forget that such disqualification as he incurs is, again, under this section. It will not be a disqualification under article 102 or under the Constitution. Therefore, I feel that any invocation of either article 101, article 102 or article 103 in connection with either the disqualification incurred in this case or that which followed the disqualification is not justified.

What has happened is that all the action that has been taken has been taken under the Part C States Act. That should completely remove all apprehensions as to the unconstitutionality of the proposed legislation. We are not dealing with the Constitution or a matter which really arises under the Constitution.

Examining things in that light, let us see what has happened. There was, under section 17 of the Part C States Act, a provision for disqualification and, under section 16, for the vacating of the seat by reason of the disqualification. But when that Act was framed, there was no provision in it as to how a question as to disqualification was to be decided. That, we have been told, was brought in by the machinery of section 43. Here again, it is fundamental to remember that section 43 brought in the Presidential Order and it is under the Presidential Order that a decision was first made by the Election Commission which was accepted by the President. Therefore, the whole series of events culminating in the President's decision followed, not under or from the Constitution, but derived their force completely from the Part C States Act. I am assuming of course for the purpose of this argument that the Presidential Order is a valid order. We must remember that that Order was made, not by the President acting under or in exercise of his powers under the Constitution; it was made by the President acting under section 43, which constitutes the authority conferred on the President by Parliament by its legislation. Therefore, all that has been said about flouting the President's final decision made under the Constitution has, in my view, no relevance. The President has not exercised his functions as President under the Constitution at all. He has acted under the authority conferred upon him by a Parliamentary statute which Parliament, as we all know, is competent at any time to alter, revoke or amend, either prospectively or retrospectively.

May I call attention to an instance of a similar kind which arose, I believe in 1932, when a question arose with regard to the membership of the Ceylon Legislative Council? The elections had taken place under an Order-in-Council made by His Majesty. After the elections a disqualification had supervened, and the person disqualified was being prosecuted as being liable to a penalty for having acted as a member though disqualified. This is reported in 1932 Appeal Cases. When such a prosecution was pending, an amending Order-in-Council was made, again by His Majesty, retrospectively curing the disqualification, giving him an indemnity, in terms, in respect of the prosecution which was pending. That is the length to which legislation went in curing the disqualification. An objection was raised as to the validity of the retrospective legislation which was effected by the Order-in-Council and the answer of the Privy Council was. . . .

Shri Vallatharas (Pudukkottai): Will he kindly quote the case?

The Attorney-General: 1932 Appeal Cases, page 260. The Privy Council dealt with the objection raised, in these very cryptic words:

> "The legislators certainly have every right to prevent, alter or reverse the consequences of their own decrees".

That is what the Privy Council said; and that is the principle which underlies this legislation. What has happened and what is sought to be cured is entirely the consequence of Parliamentary legislation commencing, you will remember, with the election, the incurring of the disqualification and the subsequent acts of the Election Commission and the President. All that was a consequence of parliamentary legislation. It is open to Parliament to get rid of these consequences of its own legislation retrospectively. That, I believe, is sufficient to dispose of the question of unconstitutionality in regard to the proposed measure.

But, as I have said already, I wish to take a further step and express the view that not only is the proposed legislation not unconstitutional but it is constitutionally proper, and for this reason. In England, as most of us know, by a long series of statutes, resolutions of Parliament, reports of Select Committees, spread over two or three hundred years, attempts have been made to get rid of executive influence over Parliament by disqualifying members, who hold offices of profit, from membership. There are over a hundred statutes of various kinds in regard to this matter. Notwithstanding all care, sometimes members commit mistakes. A member not knowing that he is accepting what is an office of profit accepts the office and becomes disqualified. In such cases, it has been the practice of Parliament, a reference to May's Parliamentary Practice will show—I will presently give the reference—to pass Acts of Indemnity retrospectively curing the disqualification, and indemnifying the member against the penal consequences of his action in having acted as a member while not being qualified to act as a member. May I invite attention to what has been stated in May's Parliamentary Practice at pages 212 and 213? Three illustrations are given of fairly recent legislation of the character which I have mentioned. The first is legislation referring to Mr. A. Jenkins. The Act was passed in 1941, called the Arthur Jenkins Indemnity Act. The book quotes the words of the Minister who introduced the Bill.

> "In the words of the Minister who moved the second reading, this was 'not an appointment to which there is a salary attached in the ordinary sense of the word, but there is a certain small sum payable per sitting. Mr. Jenkins did not take that fee, but... there is no doubt that, as the law now stands, it is an office of profit under the Crown, though it is not in the colloquial sense an office at all, and in this particular case, though the fee was payable, it was not accepted, so there was no profit....' "

There was a debate in the House of Commons and a reference is given. One finds that the whole basis of the recommendation made to Parliament that an Act of Indenmity be passed is that Mr. Jenkins, who was relieved of the disqualification retrospectively had acted *bona fide*. He had not the least notion that he was doing anything which the law prohibited or that he was accepting an office of profit. That was in 1941.

We have another instance mentioned there. That was in 1945-46.

Pandit Balkrishna Sharma (Kanpur Distt. South *cum* Etawah Distt.—East): What would have happened to Mr. Jenkins had he accepted the fees?

The Attorney-General: That would have made no difference. In fact, we have such illustrations also in subsequent legislation. The next instance mentioned happened after the General Elections in 1945. This is how it is set out:

> "...... it was found that the persons elected for the Coatbridge Division of Lanark and the Springburn Division of Glasgow were disqualified at the time of their election because they were members of tribunals appointed by the Minister under the Control of Furnished Rents Act, 1943, which entitled them to a trivial amount for subsistence and travelling expenses."—Something similar to what we have here—"A Select Committee reported that the disqualification was incurred inadvertently, and in accordance with their recommendation the Coatbridge and Springburn (Elections Validation) Bill was introduced to validate the irregular elections."

That is the length to which Parliament went in that case. They validated the election. That again was on the ground, I may mention, that the action of the persons concerned was perfectly *bona fide*.

You have before you the statement already made that in the present case the persons concerned, or rather the Government concerned, went to the length of ascertaining whether these were offices of profit. It appears that they were advised—erroneously advised—that they were not offices of profit. But the fact remains that they acted *bona fide* and having acted *bona fide* came into these difficulties.

A further instance is mentioned here. That is of two sitting members who were elected to the General Medical Council. That carried some remuneration. The result was that the two members vacated their appointments and an Act of Indemnity was passed to protect them. That was as late as 1949.

Pandit Balkrishna Sharma: Were they made members again?

The Attorney-General: I do not think they were made members in that case. But, the disqualification was removed.

Pandit Balkrishna Sharma: That is another matter. Here you are filling up the seats.

The Attorney-General: That, of course, is one way of doing it. The question as to what you should do in a particular case is entirely for the hon. Members. I am only concerned with pointing out what is legally competent for you to do and that if you do it in a particular way, it would not be unconstitutional, nor would there be any constitutional impropriety. Having heard that, what action should be taken, whether in a particular manner or in a different manner, is a matter entirely for the House.

If you examine the matters also from the larger point of view of constitutional propriety leaving alone constitutional legality, even there, I submit, in a case like the present, where the disqualification has been incurred *bona fide*, and though legally and technically it is an office of profit, is of a trivial nature, it would not only be constitutionally not improper, but I think, having regard to the precedents that we have, it would be constitutionally proper to set the position of these members right and allow them to continue to be members of the Legislature.

Only one word more. Something has been said about flouting the President's Order by reason of the finality of his Order being questioned. After great deliberation I say it is nothing of the kind. The President, as I have already pointed out, has exercised his function under parliamentary legislation. By the proposed legislation no slur is cast either on the Election Commission, the tribunal or on the President. On the contrary, the decision which they have given is accepted to be correct, and it is in order to cure the effects of that correct decision that the legislation is being brought. So, in my submission, there is no question of either flouting the Election Commission or the President, and the legislation proposed is not only constitutional, but constitutionally proper.

Shri V. G. Deshpande (Guna): May I ask one question about the English law? May I know from the Attorney-General whether there is any difference betwen the English law and the Indian law so far as deciding the composition of the House is concerned, is there any Election Commission or a separate authority created in England for deciding these matters, or whether the House of Commons is the final authority there, and therefore, whether the analogy of the English Parliament or House of Commons is applicable in the case of the qualification or disqualification of the members of Indian Legislatures? I would be highly obliged if he can enlighten us on this point.

The Attorney-General: It is true, as the hon. Member points out, that so far as England is concerned, these questions of disqualification are dealt with by the House of Commons itself. They appoint Committees, and those Committees make reports, and the House of Commons deals with the reports. But may I also point this out that that really makes no difference either to the legality of the matter or to the propriety of the matter, because the Commission in this case derives its authority from an Act of Parliament, and it is perfectly open to Parliament to alter the position laid down by itself in the Act.

Shri Raghavachari: Is it not the point that those disqualifications were held to be no disqualifications before the final order was actually passed in those cases to which you referred?

The Attorney-General: In fact, it was because there were disqualifications the parliamentary statutes had to be passed. Otherwise, there would be no need for them.

Mr. Deputy-Speaker: There is no question of order, because automatically....

Shri Raghavachari: No, no. The reports were submitted to Parliament and Parliament had to accept them finally before it was called disqualification. There was no final order about disqualification before the Parliament acted.

The Attorney-General: If the hon. Member looks into the report he will find that as is usual in Parliament, Select Committees are appointed to look into the matter of the alleged disqualification. The Select Committee goes into the matter. It reports that there is a disqualification, and it also reports the circumstances under which the disqualification is incurred, whether it is *bona fide*, or how and so on. Having all those circumstances before it, the House of Commons accepts the position that there is a disqualification. But because it is incurred inadvertently and *bona fide*, it adopts legislation restrospectively curing the disqualification.

Shri K. K. Basu: I would like to know whether, according to the English law, when the Select Committee sits and decides that there is already a disqualification, it is incumbent on them, before the man is actually unseated, to pass some sort of order or resolution to unseat him, because our provision says immediately disqualification is declared by the President, *ipso facto* he vacates his seat. So, I would like to know whether there is any difference between these two positions so far as our law and the English law is concerned.

The Attorney-General: In substance, there is no difference, for this reason. In England, as I have already mentioned, there are a large number of Acts which prescribe that offices of profit of a certain nature are disqualifications. Now, suppose a man steps into the office, unwittingly, as in some of these cases, and incurs a disqualification. There the law has already applied. He has incurred a disqualification. A disqualification having been incurred, the question comes before the House of Commons, and a Select Committee is appointed to investigate and so forth. So it will be seen that the law has already applied. He has incurred a disqualification just as under our section 17 these gentlemen have incurred disqualification. The position is the same.

Shri K K. Basu: My point is that....

Mr. Deputy-Speaker: He wants to know this. There is a provision here that if any member is absent for 60 days, it is open to the House to take notice of it and either to condone it or not; until that step is taken, he may continue to be a member and the House need not take action. In the other case, if he incurs a disqualification, his seat automatically becomes vacant. The hon. Member evidently wants to know whether there is a similar provision in the House of Commons that until a Committee is appointed and a declaration made, the disqualification having been incurred, till then whether he continues or irrespective of any declaration his seat will automatically become vacant the moment he assumes an office of profit, as in these cases here.

Shri K. K. Basu: May I make it even more clear? The Committee sits on it and the Committee decides that there has been a disqualification. I want to know whether immediately on the decision of the Committee the seat becomes vacant or there is another process, say by a resolution or in any other manner, it is decided that the seat should become vacant.

The Attorney-General: So far as I know, the seat becomes vacated at the moment he incurs a disqualification by reason of the law which disqualifies him, so that if thereafter he actually sits in the House of Commons, he

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would be incurring a penalty, a fine of so much per day, day by day. In the representation of the People Act we have a penal provision. Similarly they also have a penal provision. It is in order to relieve him from that penalty that some of these Acts have provided an indemnity to him; he having actually sat, after incurring the disqualification. He is liable therefore to pay the penalty. But he is protected against that; the House of Commons indemnifies him against the payment of that penalty.

Shri N. C. Chatterjee: May I put three questions to the Attorney-General, Sir? Is it correct that the Parliament in England itself issues writs for election? Secondly, is there any written Constitution which in any way has any control or any fetter on the powers of the Parliament? Thirdly, is it not that in these cases which he has cited Parliament itself appointed a Sub-Committee or Select Committee and the Select Committee's report came up before the House of Commons recommending in the very report itself that there has been actually no real offence committed and if any technical offence has been committed, that should be condoned? Therefore, there is no question of any tribunal functioning, adjudicating the matter and passing a final order. Parliament itself, while accepting the recommendation of the Committee, really removes any technical difficulty if it is there.

The Attorney-General: There are three points raised by the hon. Member. As to the last, the answer is obvious; I have already stated that there is no separate tribunal there like the Election Commission as we have here. The Parliamentary Committee there goes into the question, each Committee being appointed for a particular case coming before Parliament.

As to the second point, I do not think that it requires an answer. Everybody knows that the British Parliament does not function under a written constitution.

As to the first question, I am not in a position categorically to state who issues the writs. I have not gone into it at the moment.

Mr. Deputy-Speaker: I understood the Attorney-General to say that with respect to Part C States we are governed by the Act that has been passed by Parliament. The question is, so far as Part A and Part B States are concerned—we will assume a similar question arises—whether under article 102(a) it is not open to Parliament here to say that membership of such-and-such District Committee is not an office of profit? Even here in Part A and Part B States, if some Member of Parliament, of any House of the Legislature, should be appointed a member of a District Committee or local board, with a sitting fee of rupees five, the question is, under article 102(a)—"other than an office declared by Parliament by law not to disqualify its holder"—whether under similar circumstances a similar act would be quite constitutional or not?

The Attorney-General: As I have stated, the position does not arise. But I will deal with what is put to me by you, Sir. The position is that it is Parliament which has been given power under that clause of article 102 to decide what are offices of profit and what are not offices of profit. They may decide this by a comprehensive legislation laying down what are not offices of profit or they may do it piecemeal dealing with particular offices. Under that clause, even in the case of a parliamentary election, in my view, it would be competent to Parliament to say that certain offices of profit, actually involving gain, are not offices of profit. If they are entitled to say that, I do not see any reason why they should not say it both prospectively and retrospectively.

Mr. Deputy-Speaker: Has the President under the Constitution the right to disqualify or only to declare the disqualification already provided for?

The Attorney-General: The position is very clear. The President, as the executive head of the Republic, has been obliged by the Constitution, wherever the articles apply, to accept as binding on him the decision of the Election Commission. So, he is merely constituted an authority who accepts a decision really arrived at by the Election Commission. That is the position. Under article 103, no option is left to him to reject the decision or exercise his mind over it. It is really the decision of the Election Commission which he is obliged under the Constitution to accept.

Mr. Deputy-Speaker: Has the Election Commissioner or the President the right to remove a disqualification or is it the peculiar privilege of Parliament only?

The Attorney-General: They cannot possibly remove the disqualification. This is a matter either under the Constitution or under some legislation. In this case we are concerned with legislation. If it is legislation, Parliament can remove it by proper legislation. If it is a constitutional disqualification, Parliament can again remove it in the manner in which it would alter a constitutional provision.

Mr. Deputy-Speaker: I thank the Attorney-General.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 11th May, 1953.